



COUNCILOR-AT-LARGE
JULIE R. FLOWERS,
COUNCIL PRESIDENT
HANNAH L. BOWEN
BRENDAN S. SWEENEY

City of Beverly

CITY COUNCIL

WARD COUNCILORS
WARD 1 TODD C. ROTONDO
VICE PRESIDENT
WARD 2 ESTELLE M. RAND
WARD 3 STEVEN M. CROWLEY
WARD 4 SCOTT D. HOUSEMAN
WARD 5 KATHLEEN M. FELDMAN
WARD 6 MATTHEW J. ST. HILAIRE

Agenda
Regular City Council Meeting
Monday March 21, 2022
City Council Chambers
191 Cabot Street, 3rd Floor
7:00 PM

2022 MAR 17 P 2:07
CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE

Roll Call of Members:

Pledge of Allegiance to the Flag: Councilor Feldman

Moment of Silence:

Resolutions: None

Presentations, Awards and Memorials: None

Comments by Citizens (subject to the conditions contained in Appendix A to the "Rules and Orders"): Anyone who would like to speak at the Meeting has until 9:30AM on the day of the Meeting to register with the City Clerk. (Limit of 3 @ 5 minutes each):

1. Carole Rein, 27 Pratt Ave

Public Hearings:

1. 7:15 PM-Order #069-Transfer of \$10,500 from the Reserve for Union Negotiations into the Fire Department Budget to fund costs associated with recently agreed upon MOA between City of Beverly and Fire Dispatch Union.
2. 7:25 PM-Order #070-Transfer \$113,500 into various Municipal Department budgets to fund costs associated with recently settled contract between City of Beverly and BMEA.
3. 8:00 PM-Order #065-National Grid/New England Power Company Petition for Transmission Line Franchise.

Acceptance of Minutes of Previous Meeting:

1. Regular City Council Meeting -March 7, 2022
2. Committee of the Whole Meeting-March 14, 2022

Communications from His Honor the Mayor:

1. Order #081-Appointment-Conservation Commission-Ms. Amber Redmond, 55 Parramatta Road.
2. Order #082-Reappointment-Beverly Harbor Management Authority-Danielle Spang, Esq., 16 Mulberry Street.
3. Order #083-Reappointment-Beverly Historic District Commission-Ms. Suzanne LaMont, 20 Porter Street.
4. Order #084-Appointment-Beverly Council on Aging-Mr. Richard Tabbut, 57 Sonning Road.
5. Order #085-Appointment-Human Rights Committee, Ms. Hoang Sa Ngyuen, 32 Iverson Road.
6. Order #086-Appointment-Permanent Building Commission-Mr. Bruce MacDonald, D. Scott Dullea, Esq. and Robin Luna-Whitman.
7. Order #087-Recommendation for the Acceptance of Easement from Cummings Properties at 50 Dunham Road
8. Order #088-Order approving Lease of Kearsarge, Beverly LLC for 90 Colon Street, 191 and 502 Cabot Street, 10 and 11 Pond Street and 100 Sohler Road for Solar Photovoltaic Array installation.
9. Order #088-A-Approval of Solar Power and Services Agreement with Kearsarge, Beverly LLC.
10. Order #088-B-Approval of Payment in Lieu of taxes Agreement with Kearsarge, Beverly LLC for personal Property.

Communications, from other City Officers and Boards:

1. Order #089-City Clerk-Request to change the September 6, 2022 Regular City Council Meeting to Monday, September 12, 2022 due to the September 6, 2022 State Primary Election.
2. Order #090-City Clerk-Fortune Teller License Renewal-Summer Evans, 507 Rantoul Street.
3. Order #091-Parking and Traffic- Re: Recommendation: Change Loading Zone Time Parameters At 110-114 Rantoul Street.

Communications, Application and Petitions:

1. Order #092-Department of Environmental Protection-Issuance of Chapter 91 Waterways License/Permit No. 15441.

Unfinished Business from a previous meeting: None

Scott D. Houseman-Chair
Julie R. Flowers
Matthew J. St. Hilaire

FINANCE AND PROPERTY / CITY COUNCIL COMMITTEE OF THE WHOLE

Monday, March 21, 2022

7:00PM

Within the Confines of the City Council Meeting
City Council Chambers
3rd Floor, Beverly City Hall
191 Cabot St.

Order Number	Date to Committee	Description	Action Taken
#024	1/18/2022	Councilor Houseman-Letter regarding the Financial Forecast Committee	
#058	2/22/2022	Councilor Bowen and Councilor Houseman-Rodent infestation in downtown and other neighborhoods	
#060	2/22/2022	Councilor Houseman-A letter to meet with Finance & Property for discussion on the budget	
#062	2/22/2022	Councilor Houseman-National Grid Cable Transmission Project	
#064	2/22/2022	Councilor Houseman-Rodent Control	
#069	3/7/2022	Transfer-\$10,500 from the Reserve for Union Negotiations into the Fire Department Budget to fund costs associated with recently agreed upon MOA between the City of Beverly and Fire Dispatch Union	Public hearing 3/21/22 at 7:15pm
#070	3/7/2022	Transfer- \$113,500 into various municipal department budgets to fund costs associated with recently settled contract between City of Beverly and BMEA	Public hearing 3/21/22 at 7:25pm
#076	3/7/2022	Community Preservation Committee-9th Round CPA Project Funding Recommendations	Public hearing 4/4/22 at 7:30pm

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2022 MAR 17 P 2:07

Estelle M. Rand-Chair
Todd C. Rotondo
Brendan S. Sweeney

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LEGAL AFFAIRS / CITY COUNCIL COMMITTEE OF THE WHOLE MEETING

Monday, March 21, 2022
7:00PM

2022 MAR 17 P 1:25

Within the Confines of the City Council Meeting
City Council Chambers
3rd Floor, Beverly City Hall
191 Cabot St.

Order Number	Date to Committee	Description	Action Taken
#056	2/22/2022	Councilor Rotondo-Amendment to Chapter 270-Section 37A "Bicycle lanes shall be created in the following locations"	
#075	3/7/2022	Tim Flaherty, Charter Review Committee Final Report	Public hearing 4/4/2022 at 7:45pm
#079	3/7/2022	City Solicitor-Process for local approval of home rule petition to amend the City's 1995 Home Rule Charter	

Kathleen M. Feldman-Chair
Hannah L. Bowen
Steven M. Crowley

CITY OF BEVERLY
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CITY CLERK'S OFFICE

2022 MAR 15 P 2:56

PUBLIC SERVICES / CITY COUNCIL COMMITTEE OF THE WHOLE

Monday, March 21, 2022

7:00PM

Within the Confines of the City Council Meeting

City Council Chambers

3rd Floor, Beverly City Hall

191 Cabot St.

Order Number	Date to Committee	Description	Action Taken
#033	2/7/2022	Councilor Rotondo and Councilor Crowley-Consideration request to hold a Public Service forum to address the flooding in Ward 1 and Ward 3	
#037	2/7/2022	Councilor Crowley-Request to hold a Public participation forum for a Public Service Committee Meeting regarding Varian Site at 150 Sohier Road	
#058	2/22/2022	Councilor Bowen and Councilor Houseman-Rodent infestation in downtown and other neighborhoods	
#062	2/22/2022	Councilor Houseman-National Grid Cable Transmission Project	
#064	2/22/2022	Councilor Houseman-Rodent Control	
#065	2/22/2022	National Grid, New England Power Company Petition for Transmission Line Franchise	Public hearing 3/21/2022 at 8:00pm

City of Beverly
Regular City Council Meeting
Public Meeting Minutes
Monday, March 7, 2022, 7:00pm
City Council Chambers, 191 Cabot St.

CITY OF BEVERLY
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CITY CLERK'S OFFICE
2022 MAR 17 A 11:47

Julie Flowers, City Council President, called the meeting to order at 7:02pm, City Clerk, Lisa Kent, took the attendance by roll call.

Members Present: Hannah Bowen, Steven Crowley, Kathleen Feldman, Scott Houseman, Estelle Rand, Todd Rotondo, Matthew St. Hilaire, Brendan Sweeney, Julie Flowers

Members Absent: None

Houseman led the pledge of allegiance.

A moment of silence was held for all those in Ukraine and for all those whose lives are impacted by war and violence.

Presentations, Awards and Memorials

Update on American Rescue Plan Act (ARPA) Funds

Mayor Michael Cahill, Finance Director Bryant Ayles and ARPA Manager Jaimie Corliss

Corliss stated Beverly is getting 12.6 million dollars. The legislative intent is to help stabilize and rebuild the economy post-pandemic and to help disproportionately impacted individuals, businesses, and households. Corliss reviewed the primary areas of spending, such as responding to the public health emergency, responding to negative economic impacts, replacing lost public sector revenue, investing in capital improvements, and administrative costs. Corliss stated there needs to be a maintenance of flexibility to be responsive to changing needs. Opportunity for public input is also an important piece. A hub is being developed on the City's website, community stakeholders are being engaged, and people can contact arpa@beverlyma.gov.

Feldman asked how many of these areas and projects are already planned out and how much room there is for new ideas.

Corliss stated it is a mix and depends on the category. They are not locked in, but it is based on conversations about goals and outcomes.

Cahill stated the Lynch Park parking lot has been looked at for a few years as a project using the park enterprise fund, but there has been lost revenue in that fund due to fewer programs, so instead we would consider taking it from ARPA. When we all met last summer and when the grant was accepted, we committed to working on this together, so this will be an ongoing conversation.

Rotondo asked if there are ideas for how to break that money up per year.

Corliss stated that the phases in which it would be expended are still being developed.

Bowen asked for a snapshot of how much has been spent so far.

Corliss stated the total currently is right around \$400,000.

Bowen stated she was curious about projects in the 2022 capital expenditure plan. There were not any indications in that report about where ARPA money might be used, but some projects seemed to fit the ARPA priorities.

Ayles stated the legislative intent of ARPA is specific to the pandemic. Since reading through the legislation, we are taking a closer look at the services being provided to at-risk youth,

specifically within the census tract which runs effectively from Gloucester Crossing up to around Henry's. We can make a good impact to that population by possibly providing some enhanced services, like recreation and socialization opportunities, that are very difficult on the campus of the McPherson Center right now as it is, so that is kind of where that project came from.

Cahill stated the eligible federal census tract is about from Rantoul to Bass River around Gloucester Crossing. With the teen center being so critical as a walk-to/bike-to/skateboard-to resource for youth and teens, and the concerns about their social, emotional, mental health development as young people, that seems a good fit. There have been conversations about bringing on an OPM to begin looking at the facility and working with partners. The library is really the default go-to in the downtown area for a warming/cooling center in extreme weather, so that may be a place to tap some ARPA funds. There is that kind of balance of managing operating funds, free cash, capital, decisions on borrowing and this, so the more conversations together, the better.

Bowen asked about applications coming in for the small business grant deadline this week.

Corliss stated the deadline was extended to March 16 at 5pm. There are 38 completed applications and about 20 emails still to go through.

Rand asked, in thinking of the library as the warming/cooling station, if there has been discussion about how to use ARPA funds for the most vulnerable citizens who are without a home right now and what category that falls under.

Corliss stated it would fall under negative economic impacts to assist under or unhoused residents. There are huge earmarks and allocations in that area, and the goal is to try not to be duplicative in what efforts are addressed, but if there are gaps that can certainly be something to discuss.

Rand stated that, much in the same way that a youth center is a top priority, a day center for people who find themselves without facilities other than the library is a top priority and concern.

Houseman asked about the HVAC systems in all of the schools.

Cahill stated there is some being set aside for investment. About \$600,000 in CARES funds was spent last year for two of the schools. They all are going to be replaced soon.

Houseman expressed his preference for using the legacy set of plans and priorities as much as possible for capital improvement projects without relying on ARPA. Houseman stated he is concerned that services to people unique to Covid, like social-emotional health for youths, are not directly related to any particular building. Houseman stated he was concerned about taking too much of a percentage and spending it on capital improvements.

Cahill stated that the goal is to spend programmatically what is needed, then turn to capital with what remains. We do not want to spend it all in one year because things may show themselves in a second year and a third year that are not apparent today.

Rotondo asked about getting reports as money is spent.

Corliss stated the Council could certainly anticipate continual updates as there is more information to be relayed.

Bowen followed up on different types of direct services that could be provided and stated she liked the idea of a day center providing services, whether that be physical services or help navigating all the other services available. One of the challenges for people is just finding where

there is assistance. Bowen asked if any thought had been given to having additional outreach staff to build up that sort of social support and connection.

Cahill stated, specific to seniors, a conversation was had with the Council on Aging board at last month's meeting, and it is being talked about. There is a threshold question with some of these things. If money is to be put to a certain task, like if more seniors are finding it difficult to meet their food security needs or have housing concerns, then is it best to put those resources through the senior center or local non-profit partners. Once the small business grant process winds down, we will be moving in that direction quickly.

City Council Budget Analyst Gerry Perry stated he has been monitoring this on the Council's behalf. He recommended keeping in mind that this funding will be depleted eventually and programs will sunset or have to be built into the budget down the road.

Comments by Citizens

Christine DePalma, 27 Chase St., read a land acknowledgement statement.

Acceptance of Minutes

Regular City Council Meeting February 22, 2022

Legal Affairs/Committee of the Whole Committee Meeting February 28, 2022

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Communications from His Honor the Mayor

Order #068-Grants-\$6,275 Student Awareness Fire Education and Senior SAFE grant for \$3,255 from the EOPSS-Department of Fire Services. Total grant award is \$9,530 for public fire and life safety initiatives in our community.

Referred to Committee on Finance and Property.

Public Hearings

Order #047-7:50PM-Transfer of \$70,920 from the Waterway Improvement Fund. The transfer consists of \$35,000 to support the CAD cell feasibility study grant, \$32,800 to support the hoist pier construction grant and \$3,120 to support the Glover Wharf float feasibility study grant.

Flowers opened the public hearing.

Ayles stated this is effectively an administrative adjustment. All three of these grants were made last year, but the match components of the grants need to be approved. Ayles stated the Waterway Improvement Fund is a special revenue fund funded by 50% of the annual boat excise tax, so about \$15,000-\$20,000 annually.

No members of the public wished to speak on the item.

Perry recommended adoption.

The public hearing was closed and the item was referred back to Committee on Finance and Property.

Ayles presented on free cash for the benefit of new councilors and the public. Free cash is defined by the Division of Local Services as “the amount of funds that are unrestricted and available for appropriation.” We have some policies in Beverly for what that is used for. Free cash cannot be used from the start of the fiscal year until the balance is certified by the state in the fall. Things that help free cash are underspent appropriated funds, positive revenue variances, and other required accounting adjustments. Free cash is used for one-time expenditure capital projects, building or replenishing stabilization funds, paying down debt or unforeseen emergency needs. The City’s goal is to have 3-8% of the operating budget. There are benefits to taxpayers like creating flexibility within the budget, reducing financial risk, maintaining reserve levels, and paying cash for capital projects, which avoids borrowing costs. The current City policies are in line with best practices and help the City’s bond rating which translates to lower interest rates on existing and future debt.

Rand asked for the breakout of the categories that make up this year’s free cash, like the difference between unanticipated revenues and what has been turned back from the budget.

Houseman stated he would like to see something on the City website that communicates to the general public more about how the City manages municipal finances.

Communications from His Honor the Mayor (Continued)

Order #069-Transfer-\$10,500 from the Reserve for Union Negotiations into the Fire Department Budget to fund costs associated with recently agreed upon MOA between the City of Beverly and Fire Dispatch Union.

Referred to Committee on Finance and Property.

Public Hearings (Continued)

Order #048-8:10PM-Transfer of \$642,085 from the city’s certified free cash balance into capital fund 598 and to rescind the previously authorized loan (Order #044-2021) of \$750,000 for replacement of the turf field at the high school.

Flowers opened the public hearing.

Ayles stated that Order #044-2021 allowed for a contract to be signed and for the work to be done, but we would like to use free cash in lieu of borrowing.

Bowen and Houseman asked about the disposal of the previous turf field and how the project was closed.

Ayles stated he could get that information.

Perry recommended adoption. Perry stated the cost went down from \$750,000 and that this is a pretty good strategy that saves taxpayer money by not taking a loan.

The public hearing was closed and the item was referred back to Committee on Finance and Property.

Communications from His Honor the Mayor (Continued)

Order #070-Transfer- \$113,500 into various municipal department budgets to fund costs associated with recently settled contract between City of Beverly and BMEA.

Referred to Committee on Finance and Property.

Order #071-Approving Purchase of 14 Simon Street and 34 Simon Street, Beverly, MA for consideration of \$200,000 each.

Referred to Committee on Legal Affairs.

Public Hearings (Continued)

Order #049-8:20PM-Transfer of \$1,111,519 from the city's certified free cash balance to be placed in the City's Stabilization fund and a transfer of \$224,304 from the city's free cash balance to be placed in the OPEB trust. Transfer total requests totaling \$1,335,823.

Flowers opened the public hearing.

Ayles stated this is a result of the policy around free cash. This will allow the City to be less impacted by a recession. The OPEB portion of this has to do with the liability and funding of healthcare of employees and retirees.

There was discussion on fund balances and the City's financial goals of having 10-15% of the City's budget in savings so that services can be continued during an economic downturn.

A motion to recess the public hearing to 9:00pm was made and seconded. A vote was taken, and the motion carried (9-0).

Order #050-8:30PM-Transfer of the city's free cash balance in the amount of \$1,500,000 to be placed in the City Hall Rehabilitation capital project fund.

Flowers opened the public hearing.

Bowen asked how much this front loading of cash would save in the long term and what the City could get for less at this time. Bowen affirmed that this has been a long-standing priority but stated she is nervous about the number and about what it might save versus what opportunities might be lost, like work on roads and sidewalks.

Ayles stated that typically when the City goes to borrow there is a short term borrowing for a cash infusion, then at the close-out of the project when all the costs are final, in many cases the City at that point will permanently borrow what remains for the outstanding debt. There is a significant benefit to front loading projects with cash to save interest rates and fees.

A motion to recess the public hearing for **Order #050** to 9:10pm was made and seconded. A vote was taken, and the motion carried (9-0).

Order #066-8:40PM-Transfer of \$325,000 of the City's Free Cash for the remainder of the purchase price as well as costs of improvements to the two lots on Simon Street.

Flowers opened the public hearing.

Euplio Marciano, 141 McKay St., gave an overview of the two lots and stated this will revitalize these areas. This also provides parking for the neighborhood and is a great asset to hold on to. The neighbors will be happy with those parks coming alive again.

Alison Dudley, 7 Beckford St., requested this be approved. Dudley stated this will be important for the neighborhood to see that the City is prioritizing this community. These open spaces are critical in the neighborhood.

Chelsea Zakas, Associate Planner, stated that this is in line with the goals of the City's open space plan from 2015.

Perry recommended adoption.

The public hearing was closed and the item was referred back to Committee on Finance and Property.

Order #067-8:50PM-CPA Funding Recommendation for Out of Cycle application relative to the anticipation by the City, of two vacant lots located at 14 Simon Street and 34 Simon Street.

Flowers opened the public hearing.

Ayles stated this is the other piece of funding for the previous item.

Marilyn McCrory, member of the Open Space and Recreation Committee, thanked the City for jumping at the opportunity.

A motion to recess the public hearing for **Order #049** to 9:05pm was made and seconded. A vote was taken, and the motion carried (9-0). The hearing on **Order #067** was resumed.

Perry recommended adoption.

Alison Dudley, 7 Beckford St., stated she is the Ward 3 representative on the Open Space and Recreation Committee and expressed support for this funding as well. These are small parks but will have a big impact.

The public hearing for **Order #067** was closed and the item was referred back to Committee on Legal Affairs.

Communications from His Honor the Mayor (Continued)

Order #072-Grant-\$1,300 from the Commonwealth of Mass MED-Project Drug Stewardship Program. This grant will be used for costs surrounding the management and disposal of unwanted household opioids in the medication collection receptacle in the Beverly Police Station lobby.

Referred to Committee on Finance and Property.

Order #073-Grant-\$3,000 to the Emergency Management Task Force a Hazardous Material Emergency Preparedness grant from the Mass Emergency Management Agency to be used for hazardous materials planning, training, and exercise activities with a goal of developing, improving and carrying out emergency plans.

Referred to Committee on Finance and Property.

Public Hearings (Continued)

Order #049-Transfer of \$1,111,519 from the city's certified free cash balance to be placed in the City's Stabilization fund and a transfer of \$224,304 from the city's free cash balance to be placed in the OPEB trust. Transfer total requests totaling \$1,335,823.

Flowers opened the public hearing.

Lorinda Visnick, 39 Middlebury Lane, stated the City is in fantastic financial shape. Visnick encouraged the Councilors to think of a much bigger picture of how the City does forecasting and how it is that the City gets money in these buckets, specifically the stabilization fund. We talk about it as a rainy day fund, and we are going through a two-year nor'easter. The Council can vote to change their financial policies. There is this very large pool of money, and it seems like we cannot ever spend it. Over a million dollars is a lot, and we could be doing a lot of different things.

Perry recommended adoption. The policy goal is to get to 10-15% of the general funds in the stabilization fund. If this is approved, it would get to 11.9%. It helps protect the bond rating. By having these kinds of reserves in place, the City can get cheaper loan orders which saves the taxpayer money. The City did take one million from stabilization during the pandemic and was able to avoid layoffs. If it gets up to 13½ -14% then it would be good to begin having a dialogue about what to do with those funds.

A motion to recess the public hearing for **Order #050** to 9:20pm was made and seconded. A vote was taken, and the motion carried (9-0). The hearing on **Order #049** was resumed.

Feldman asked at what point it would negatively impact the bond rating to take out of the fund or to not add to the stabilization fund. Feldman also asked what it could be used for during a recession.

Perry stated the rating agencies like to see policies in places, the capacity to do it for continuity and the overall picture. Perry stated it can be used for any legal appropriation by state law. It would require a 2/3 vote and the mayor to initiate it. The City has financial policies that suggest what to use it for.

St. Hilaire stated he has been a supporter of the current approach. At some point it might be good to revisit. St. Hilaire asked if coming into budget season there could be some sort of analysis of the impact of the pandemic and how the City weathered the storm. St. Hilaire also suggested putting more towards road and sidewalk repair.

A motion to recess the public hearing for **Order #050** to 9:35pm was made and seconded. A vote was taken, and the motion carried (9-0). The hearing on **Order #049** was resumed.

Houseman stated the City is certainly in a different place financially than when these policies were implemented. When there were recessions in the past and state aid went down, we had to ask if we would have to lay off folks. That was a real issue, and there was even a conversation about if an elementary school would need to be closed down. Following the policies has gotten the City to the place where we can have this kind of conversation instead of that kind of conversation. When there have been recessions in the past, they were normal setbacks; this is not a normal set back or recession. The money from the federal government through these various different acts is not going to last and will not be available down the road, so this is an important conversation to have. Houseman stated he does not have a problem with the advocacy to spend on services but cautioned the Council that there is a reason the policies are there. Even though it looks like a lot of money, it is important to think about the big global picture.

Rand expressed her support for the transfer. The City is in good economic shape due to these policies. Rand stated that this time of year always brings to mind the dichotomy of the health of the City and the experience of the citizens. Housing is a major roadblock. Rand considered how

it can be supported even better than it is now and how to support citizens to become economically stable.

Sweeney stated we should take advantage of the unique opportunity we are in to add to what is spent annually on roads and sidewalks. We should continue with the policy as it has been developed, but with this ARPA infusion, there is the opportunity to both build the stabilization fund, consistent with the financial policies, but then also look to other funding to make some meaningful investments in the City.

A motion to recess the public hearing for **Order #050** to 9:45pm was made and seconded. A vote was taken, and the motion carried (9-0). The hearing on **Order #049** was resumed.

Crowley asked when the City would get to the point of having that 13-14% in the stabilization fund.

Ayles stated it would take two to three years if the City continues putting funds in annually.

Cahill stated he wanted to echo what Councilor Houseman said on a lot of fronts. This conversation is always of great value. When we make the budget every year, we are trying to make sure that we can deliver really good services in all our departments. The goal of the stabilization fund is to ensure that when the inevitable downturn in the economy does come, we can continue to deliver services through a recession.

The public hearing was closed and the item was referred back to Committee on Finance and Property.

Communications from His Honor the Mayor (Continued)

Order #074-2022 Capital Expenditure Plan

A motion to receive and place on file was made and seconded. A vote was taken, and the motion carried (9-0).

Public Hearings (Continued)

Order #050-Transfer of the city's free cash balance in the amount of \$1,500,000 to be placed in the City Hall Rehabilitation capital project fund.

Flowers reopened the public hearing.

Houseman asked about the design.

Ayles stated once a designer comes on board, they will meet with stakeholders, do a needs assessment, look at the current structure and come up with what is feasible.

Houseman stated he hoped the Council would have input as they conduct their business in City Hall.

The public hearing was closed and the item was referred back to Committee on Finance and Property.

Communications from other City Officers and Boards

Order #075-Tim Flaherty, Charter Review Committee Final Report (Report is on file for public viewing at the City Clerk's Office and on the City Clerk's website).

Referred to Committee on Legal Affairs.

Order #079-City Solicitor-Process for local approval of home rule petition to amend the City's 1995 Home Rule Charter.

Referred to Committee on Legal Affairs.

Order #076-Community Preservation Committee-9th Round CPA Project Funding Recommendations.

Referred to Committee on Finance and Property.

Order #077-Quarter 2 summary from the School Committee Finance and Facilities.

A motion to receive and place on file was made and seconded. A vote was taken, and the motion carried (9-0).

Order #078-City Clerk-New License for Witch City Taxi, Inc. at 92 Jackson Street, Salem.

Referred to Committee on Legal Affairs.

Communications, Application and Petitions

Order #080-Keolis-2022 Yearly Operating Plan.

A motion to receive and place on file was made and seconded. A vote was taken, and the motion carried (9-0).

Motions and Orders

Order #055-Sergeant Henebury- Amendment to Include Handicapped Parking Space at Lyons Park, located across from 126 Lothrop on the East side.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Flowers noted that the final passage will be at the next meeting.

The motion to recess for committee work was made and seconded. A vote was taken, and the motion carried (9-0). The meeting recessed at 10:01pm.

Flowers called the meeting back to order at 10:35pm.

Reports from Committees

Finance and Property

Order #047-Transfer of \$70,920 from the Waterway Improvement Fund. The transfer consists of \$35,000 to support the CAD cell feasibility study grant, \$32,800 to support the hoist pier construction grant and \$3,120 to support the Glover Wharf float feasibility study grant.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

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A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #050-Transfer of the city's free cash balance in the amount of \$1,500,000 to be placed in the City Hall Rehabilitation capital project fund.

A motion to approve was made and seconded. A vote was taken, and the motion carried (8-1, Bowen).

Order #066-Transfer of \$325,000 of the City's Free Cash for the remainder of the purchase price as well as costs of improvements to the two lots on Simon Street.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #068-Grants-\$6,275 Student Awareness Fire Education and Senior SAFE grant for \$3,255 from the EOPSS-Department of Fire Services. Total grant award is 9,530 for public fire and life safety initiatives in our community.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #069-Transfer-\$10,500 from the Reserve for Union Negotiations into the Fire Department Budget to fund costs associated with recently agreed upon MOA between the City of Beverly and Fire Dispatch Union.

A motion to set the public hearing for March 21 at 7:15pm was made and seconded.

Order #070-Transfer- \$113,500 into various municipal department budgets to fund costs associated with recently settled contract between City of Beverly and BMEA.

A motion to set the public hearing for March 21 at 7:25pm was made and seconded.

Order #072-Grant-\$1,300 from the Commonwealth of Mass MED-Project Drug Stewardship Program. This grant will be used for costs surrounding the management and disposal of unwanted household opioids in the medication collection receptacle in the Beverly Police Station lobby.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #073-Grant-\$3,000 to the Emergency Management Task Force a Hazardous Material Emergency Preparedness grant from the Mass Emergency Management Agency to be used for hazardous materials planning, training, and exercise activities with a goal of developing, improving and carrying out emergency plans.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #076-Community Preservation Committee-9th Round CPA Project Funding Recommendations.

A motion to set the public hearing for April 4 at 7:30pm was made and seconded.

Legal Affairs

Order #59-City Clerk-Lodging House License, Jalbert Properties, LLC for Highland Manor at 7 Highland Avenue

A motion to approve a conditional license was made and seconded. A vote was taken, and the motion carried (9-0).

Order #063-Assistant City Solicitor Oldmixon-Fixed Route Amphibious Sightseeing Tour Application and Process for Council Review and Comment

A motion to receive and place on file was made and seconded. A vote was taken, and the motion carried (9-0).

Order #067-CPA Funding Recommendation for Out of Cycle application relative to the anticipation by the City, of two vacant lots located at 14 Simon Street and 34 Simon Street.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #071-Approving Purchase of 14 Simon Street and 34 Simon Street, Beverly, MA for consideration of \$200,000 each.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Order #075-Tim Flaherty, Charter Review Committee Final Report (Report is on file for public viewing at the City Clerk's Office and on the City Clerk's website).

A motion to set the public hearing for April 4 at 7:45pm was made and seconded. A vote was taken, and the motion carried (9-0). A motion to refer back to Legal Affairs was made and seconded. A vote was taken, and the motion carried (9-0).

Order #078-City Clerk-New License for Witch City Taxi, Inc. at 92 Jackson Street, Salem.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Public Services

Order #051-Reappointment-Mr. Michael Murphy as City Republican Committee Representative on the Registrar of Voters.

A motion to approve was made and seconded. A vote was taken, and the motion carried (9-0).

Flowers stated there would be a Committee of the Whole meeting on March 14 at 6:30pm and the next regular meeting will be on March 21 at 7:00pm.

Houseman stated that Order #060 in Committee on Finance and Property will be put off until the end of the month. Since there is so much other business going on, it will be scheduled later on.

A motion to adjourn was made and seconded. A vote was taken, and the motion carried (9-0).

The meeting adjourned at 10:48pm.

Scott D. Houseman-Chair
Julie R. Flowers
Matthew J. St. Hilaire

**FINANCE AND PROPERTY / CITY COUNCIL COMMITTEE OF THE WHOLE
 MINUTES**

Monday, March 7, 2022, 7:00PM
 Within the Confines of the City Council Meeting
 City Council Chambers, 3rd Floor, Beverly City Hall, 191 Cabot St.

Houseman called to order the Finance and Property meeting at 10:03pm.

Members present: Julie Flowers, Matthew St. Hilaire, Scott Houseman

Order Number	Date to Committee	Description	Action Taken
#024	1/18/2022	Councilor Houseman-Letter regarding the Financial Forecast Committee	Hold
#047	2/22/2022	Transfer of \$70,920 from the Waterway Improvement Fund. The transfer consists of \$35,000 to support the CAD cell feasibility study grant, \$32,800 to support the hoist pier construction grant and \$3,120 to support the Glover Wharf float feasibility study grant	Approve 3-0
#048	2/22/2022	Transfer of \$642,085 from the city's certified free cash balance into capital fund 598 and to rescind the previously authorized loan (Order #044-2021) of \$750,000 for replacement of the turf field at the high school	Approve 3-0
#049	2/22/2022	Transfer of \$1,111,519 from the city's certified free cash balance to be placed in the City's Stabilization fund and a transfer of \$224,304 from the city's free cash balance to be placed in the OPEB trust. Transfer total requests totaling \$1,335,823	Approve 3-0
#050	2/22/2022	Transfer of the city's free cash balance in the amount of \$1,500,000 to be placed in the City Hall Rehabilitation capital project fund	Approve 3-0
#058	2/22/2022	Councilor Bowen and Councilor Houseman-Rodent infestation in downtown and other neighborhoods	Hold
#060	2/22/2022	Councilor Houseman-A letter to meet with Finance & Property for discussion on the budget	Hold
#062	2/22/2022	Councilor Houseman-National Grid Cable Transmission Project	Public hearing 3/21/22 at 8:00pm
#064	2/22/2022	Councilor Houseman-Rodent Control	Hold
#066	2/22/2022	Transfer of \$325,000 of the City's Free Cash for the remainder of the purchase price as well as costs of improvements to the two lots on Simon Street	Approve 3-0
#068	3/7/2022	Grants-\$6,275 Student Awareness Fire Education and Senior SAFE grant for \$3,255 from the EOPSS-	Approve 3-0

		Department of Fire Services. Total grant award is 9,530 for public fire and life safety initiatives in our community	
#069	3/7/2022	Transfer-\$10,500 from the Reserve for Union Negotiations into the Fire Department Budget to fund costs associated with recently agreed upon MOA between the City of Beverly and Fire Dispatch Union	Public hearing 3/21/22 at 7:15pm
#070	3/7/2022	Transfer- \$113,500 into various municipal department budgets to fund costs associated with recently settled contract between City of Beverly and BMEA	Public hearing 3/21/22 at 7:25pm
#072	3/7/2022	Grant-\$1,300 from the Commonwealth of Mass MED-Project Drug Stewardship Program. This grant will be used for costs surrounding the management and disposal of unwanted household opioids in the medication collection receptacle in the Beverly Police Station lobby	Approve 3-0
#073	3/7/2022	Grant-\$3,000 to the Emergency Management Task Force a Hazardous Material Emergency Preparedness grant from the Mass Emergency Management Agency to be used for hazardous materials planning, training, and exercise activities with a goal of developing, improving and carrying out emergency plans	Approve 3-0
#076	3/7/2022	Community Preservation Committee-9th Round CPA Project Funding Recommendations	Public hearing 4/4/22 at 7:30pm

At 10:16pm, Committee of the Whole was called to order.

The motion to adjourn the Committee of the Whole was made and seconded. A vote was taken, and the motion carried (9-0). The motion to adjourn the Finance and Property meeting was made and seconded. A vote was taken, and the motion carried (3-0). The meeting adjourned at 10:31pm.

Estelle M. Rand-Chair
Todd C. Rotondo
Brendan S. Sweeney

**LEGAL AFFAIRS / CITY COUNCIL COMMITTEE OF THE WHOLE MEETING
MINUTES**

Monday, March 7, 2022, 7:00PM

Within the Confines of the City Council Meeting

City Council Chambers, 3rd Floor, Beverly City Hall, 191 Cabot St.

Rand called to order the Legal Affairs meeting at 10:06pm.

Members present: Todd Rotondo, Brendan Sweeney, Estelle Rand

Order Number	Date to Committee	Description	Action Taken
#056	2/22/2022	Councilor Rotondo-Amendment to Chapter 270-Section 37A "Bicycle lanes shall be created in the following locations"	Hold
#067	2/22/2022	CPA Funding Recommendation for Out of Cycle application relative to the anticipation by the City, of two vacant lots located at 14 Simon Street and 34 Simon Street	Approve 3-0
#071	2/22/2022	Approving Purchase of 14 Simon Street and 34 Simon Street, Beverly, MA for consideration of \$200,000 each	Approve 3-0
#075	3/7/2022	Tim Flaherty, Charter Review Committee Final Report	Public hearing set for 4/4/2022 at 7:45pm
#078	3/7/2022	City Clerk-New License for Witch City Taxi, Inc. at 92 Jackson Street, Salem	Approve 3-0
#079	3/7/2022	City Solicitor-Process for local approval of home rule petition to amend the City's 1995 Home Rule Charter	Hold

The motion to adjourn the Legal Affairs meeting was made and seconded. A vote was taken, and the motion carried (3-0). The meeting adjourned at 10:22pm.

Kathleen M. Feldman-Chair
Hannah L. Bowen
Steven M. Crowley

**PUBLIC SERVICES / CITY COUNCIL COMMITTEE OF THE WHOLE
MINUTES**

Monday, March 7, 2022, 7:00PM
Within the Confines of the City Council Meeting
City Council Chambers, 3rd Floor, Beverly City Hall, 191 Cabot St.

Feldman called the meeting to order at 10:05pm.

Members present: Hannah Bowen, Steven Crowley, Kathleen Feldman

Order Number	Date to Committee	Description	Action Taken
#033	2/7/2022	Councilor Rotondo and Councilor Crowley-Consideration request to hold a Public Service forum to address the flooding in Ward 1 and Ward 3	Hold
#037	2/7/2022	Councilor Crowley-Request to hold a Public participation forum for a Public Service Committee Meeting regarding Varian Site at 150 Sohler Road	Hold
#051	2/22/2022	Reappointment-Mr. Michael Murphy as City Republican Committee Representative on the Registrar of Voters	Approve 3-0
#058	2/22/2022	Councilor Bowen and Councilor Houseman-Rodent infestation in downtown and other neighborhoods	Hold
#062	2/22/2022	Councilor Houseman-National Grid Cable Transmission Project	Hold
#064	2/22/2022	Councilor Houseman-Rodent Control	Hold
#065	2/22/2022	National Grid, New England Power Company Petition for Transmission Line Franchise	Public hearing 3/21/22 at 8:00pm

The motion to adjourn was made and seconded. A vote was taken, and the motion carried (3-0).
The meeting adjourned at 10:14pm.

City of Beverly
City Council Committee of the Whole Meeting
Public Meeting Minutes
Monday, March 14, 2022, 6:30pm
City Council Chambers, 191 Cabot St.

CITY OF BEVERLY
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2022 MAR 15 P 2:57

Julie Flowers, City Council President, called the Committee of the Whole meeting to order at 6:32pm.

Members Present: Hannah Bowen, Steven Crowley, Kathleen Feldman, Scott Houseman, Estelle Rand, Todd Rotondo, Matthew St. Hilaire, Brendan Sweeney, Julie Flowers

Members Absent: None

Order #065-National Grid, New England Power Company Petition for Transmission Line Franchise. Discussion regarding the process for consideration of Order #065 National Grid Petition for Transmission Line Franchise and the authority of City Council with respect to the petition.

City Solicitor Stephanie Williams introduced outside counsel, Attorney Ray Miyares and Attorney Bryan Bertram. Their firm has experience with situations in Woburn and Needham and involving the Energy Facilities Siting Board.

Miyares reviewed the grant of location process and stated the Council has the option of issuing conditions as long as the conditions are not so onerous that the siting board would seek to override them. The standards to apply are that the public should not be inconvenienced. Miyares reviewed a memo his firm provided. If the Council wanted to send a letter ahead of the discussion to request more information, it would be good to do sooner than later.

There was some discussion among Councilors of making sure pedestrians are included in traffic plans, police details, the depth of digging, repaving, and times of construction. There were also questions about noise concerns, pest control, drain management, and changing supply costs. Councilors discussed trying to mitigate impacts to residents. Councilors expressed interest in getting more information on some items such as rodent control, sequencing, pedestrian access, archaeological monitoring, post-review discoveries, storm/drainage, and the work around the fire station.

A motion to approve sending a letter was made and seconded. A vote was taken, and the motion carried (9-0).

There was discussion on the public hearing and the process of recessing to another date to allow time for the requested information to be gathered. Miyares suggested that best practice might be to leave the public hearing open until the Council is ready to vote on a final decision in case additional questions arise between meetings.

A motion to authorize the City Clerk to send the letter was made and seconded. A vote was taken, and the motion carried (9-0).

A motion to waive attorney/client privilege for the letter/memo to be released was made and seconded. A vote was taken, and the motion carried (9-0).

A motion to adjourn was made and seconded. A vote was taken, and the motion carried (9-0).

The meeting adjourned at 9:22pm.



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 081

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE
2022 MAR 17 P 12:11

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby appoint, subject to your review and recommendation, Ms. Amber Redmond, 55 Parramatta Road, Beverly to serve on the Conservation Commission.

Her term is to be effective until June 30, 2024.

Sincerely yours,

Michael P. Cahill
Mayor

Amber Redmond
55 Parramatta Road
Beverly, MA 01915
(719) 214-2405
amberlredmond@gmail.com

January 14, 2022

Mayor Mike Cahill
City of Beverly
191 Cabot Street
Beverly, MA 01915

Dear, Mayor Cahill:

It is with pleasure that I enclose my resume to indicate my interest in serving on Beverly's Conservation Commission. I am excited about joining the Commission for various reasons: I want to help protect Beverly's wetlands and open space, learn more about the MA Wetlands Protection and Conservation Commission acts, participate in local government, and strengthen my environmental citizenship skills. I'm intrigued by the committee's role as an arm of local government. In particular, I want to learn more about how the Conservation Commission works with other Beverly boards and commissions and serves as a conduit for information, grant funding, and technical assistance into the Beverly community from outside organizations and as a conduit of information about conditions and needs within the community to outside organizations. In short, the Conservation Commission is the best way to work with my fellow residents to implement real progress in Beverly's environmental quality.

I would contribute a passion for conservation, the North Shore region, and serving the Beverly community. I'm willing to listen and work hard to learn what I need to know to work with the commissioners and fully engage in the Commission's work. I've always been interested in serving on a volunteer committee in my community. The question was never if, but when --- and how or in what role.

I have the privilege now of working at the Ipswich River Watershed Association under the direction of Wayne Castonguay, a highly-regarded, well-respected, and knowledgeable conservation expert. I'm learning so much under Wayne's tutelage! What first brought me to the Watershed Association is the same thing that brings me to the Conservation Commission: Enjoyment of the outdoors. Although I'm not a hunter or a fisherman, or a cyclist, I enjoy the outdoors --- hiking, walking, gardening --- and the beauty of where we live. I'd like to see it stay that way. What began as an interest in recreational pursuits has evolved to include a desire to protect natural areas, animal species and their habitats and ensure they are well integrated into how Beverly develops. I'm probably concerned about many of the same issues that keep members of the conservation commission up at night: degradation of rivers, streams, lakes, ponds, and wetlands; loss of agricultural, forest, and other open land; wildlife habitat fragmentation and loss; polluted runoff from roads and other impermeable surfaces; and excessive or inappropriate new development; (and loss of street trees in my neighborhood!).

I've spent my entire career working in the nonprofit sector, mainly out of a desire to make a difference in my chosen corner of the world. If I've learned anything about myself over the years, it's that my work, hobbies, and interests must allow me to live out my values, and the organizations I devote my time to must define their purpose by the contributions they make in the community. As a member of the Commission, I would look forward to my efforts being judged by the extent to which they enrich nature and the lives of my neighbors.

The challenges of climate change and environmental crises can feel overwhelming. It's natural to feel like, as an individual, you can't do anything to address these threats in a meaningful way. But Beverly is an exceptional community. Some truly inspiring local initiatives and organizations are already creating meaningful and measurable change. As a conservation commissioner, I would look forward to helping my friends and neighbors make good choices and be part of the solution by learning about, advocating for, and supporting Beverly's wetlands and open spaces. I appreciate your consideration.

Sincerely,
Amber Redmond

Amber L. Redmond55 Parramatta Rd. | Beverly, MA 01915 | (719) 214-2405 | amberlredmond@gmail.com

Professional Experience

Ipswich River Watershed Association**Ipswich, MA****Director of Development & Engagement****July 2021 to Present**

- Lead fundraising initiatives aimed at generating at least 60% of the organization's annual operating budget and growing our reach, with a focus on major donors, members, and key constituents. Supervise the development and administration coordinator
- Provide strategic oversight to the outreach program and supervise the outreach manager
- Write, edit, and proofread multi-channel communications, including appeal letters, thank you messages, newsletters, and donor profiles
- Create content strategy for outreach, direct mail, and digital fundraising based on past results and funding priorities
- Analyze results and adjust strategy to keep on target for donor participation, retention, and engagement goals

Polecat Innovations, LLC**Boston, MA****Managing Director, Strategy & Operations****Jan. 2021 to Present**

- Assess market and customer need, create a product strategy, develop and continually refine product roadmaps, and monitor product development and delivery
- Communicate and coordinate with leadership, external suppliers/vendors, and stakeholders regarding all aspects of projects under my management
- Lead and support continual process improvement by identifying roadblocks and risks and recommending solutions consistent with business objectives and strategy
- Identify and drive project deliverables, milestones, and daily tasks with a strong sense of urgency

The Children's Trust**Boston, MA****Director of Foundation Relations****Apr. 2019 to Jan. 2021**

- Build relationships with corporate and foundation funders through visits, correspondence, and regular communication
- Develop individualized strategies for corporate and foundation prospects and donors
- Conduct research to identify corporate and foundation prospects whose priorities align with the Trust's strategic direction
- Work strategically with the Executive Director to define goals, objectives, metrics for the corporate and foundation program
- Work collaboratively with program colleagues and partners to respond to external opportunities for support
- Lead all aspects of creating and submitting corporate and foundation grant proposals, including writing, preparation of supporting documentation, drafting, and collection of required attachments
- Support sponsorship solicitations of the annual gala by coordinating prospects, tracking responses, serving as a point of contact, greeting sponsors at the event, and following up after the event
- Drive the implementation of best practices regarding foundation relations operations within the larger development framework

YMCA of the North Shore**Beverly, MA****Grant Manager****Jan. 2017 to Apr. 2019**

- Increased grant revenue year-over-year by 30% in 2017 and 140% in 2018
- Drafted a successful Drug-Free Communities Support Program federal grant application, securing \$625,000 to organize the Beverly community around the prevention of underage drinking and youth tobacco use
- Created a new grant development process to improve efficiency and cohesion across seven local YMCAs and the YMCA of the North Shore Association ("Association")
- Quickly developed a depth of knowledge about the programs, projects, and initiatives at seven local YMCAs and one Association to spot fundraising targets and shape cross-cutting funding opportunities
- Developed relationships, strategies, and approaches that led to support from local, state, regional, and national funders, with an emphasis on fundraising for youth development, social responsibility, and health-related endeavors
- Worked closely with seven local YMCAs and Association leadership to identify funding opportunities, build foundation engagement strategies, and develop proposals for those Ys and their programs
- Worked with seven executive directors and Advancement colleagues to identify and develop opportunities for foundation support and articulate strategies for connecting foundations to the people and priorities within these Ys
- Crafted, reviewed, and refined proposals for foundation funding, coordinating with program staff and ensuring all data and content met guidelines

- Developed proposal budgets, working closely with finance, operations, and program staff to tie budgets to expected program outcomes
- Shepherded proposals through the submission and review process
- Conceptualized, organized, and hosted site visits from foundations, briefing Association and local YMCA leadership
- Worked closely with finance, operations, program, and evaluation staff to track grant awards, meet reporting requirements, and evaluate partnership success
- Devised thoughtful stewardship as part of holistic strategy development for each foundation, including working with creative staff on the conceptualization of reports and other collateral
- Reported statistics about the grant development process to internal and external stakeholders

Building Excellent Schools (BES)

Boston, MA

Director of Development

Dec. 2015 to Jan. 2017

- Helped advance the work of 110 schools in 26 cities across the country
- Helped raise \$10 million to support over 26,000 students from mostly low-income backgrounds and expand BES' leadership development programs and high-quality charter schools
- Ensured achievement of annual and multi-year foundation, corporation, and individual giving fundraising goals
- Crafted compelling grant proposals and letters of inquiry and prepared supporting materials for submission
- Maintained relationships with foundation contacts through regular and timely communication
- Wrote and sent acknowledgements, reports, and follow-up materials to funders
- Conducted research to identify and qualify new funders and created and executed strategies for engagement
- Designed and implemented grants management processes and procedures
- Maintained up-to-date and accurate database records and grants calendar

Tufts University Advancement, Tufts Fund for Arts, Sciences & Engineering

Medford, MA

Associate Director, Volunteer Management

Sept. 2013 to Dec. 2015

- Set, implemented, and tracked the strategic direction of the Tufts Fund Volunteer program
- Oversaw reunion fundraising effort, with multiple classes improving their participation rates
- Recruited, trained, and provided support to 250+ board, advisory council, and committee members
- Supervised and trained assistant director on best practices and protocol while monitoring performance to ensure optimal productivity
- Served as the point person for division-wide questions about the Tufts Fund Volunteer program
- Strengthened Tufts Fund Volunteer brand awareness by creating program content and designing program collateral (e.g., a handbook and a volunteer toolkit) to maximize outreach, visibility, and exposure
- Co-pioneered the Reunion Fundraising Team initiative, including program design, volunteer recruitment and engagement, and comprehensive prospect plan development
- Maintained program webpage and volunteer portal
- Prepared and managed Tufts Fund Volunteer program budget

Milton Academy Development & Alumni Relations

Milton, MA

Associate Director, Annual Programs - Reunion Programs

Nov. 2012 to Sept. 2013

- Oversaw reunion fundraising effort in which reunioneing alumni bested the previous year's reunioneing alumni in both achievement and number of donors by 25% and 14%, respectively
- Directed the work of five full-time staff people working with reunion committees
- Recruited, trained, and provided support to board and reunion committees
- Collaborated with colleagues to develop and execute comprehensive solicitation strategies
- Managed the production of all reunion publications, correspondence, and reports
- Sought and arranged 50+ visits/solicitations
- Planned and executed events, from site visits and caterer selection to invitations and follow-up
- Conducted peer school research to determine reunion best practices and ensure that Milton reunions were a model

Boston University

Boston, MA

Various roles with increasing levels of responsibility

Jan. 2009 to Oct. 2012

Assistant Director, Alumni Networks, Alumni Association

2011 to 2012

- Managed and advised volunteer groups, councils, and committees, increasing young alumni engagement by 32%
- Planned and executed events, including one for which my communications colleagues and I were awarded two gold-level Circle of Excellence Awards by CASE; the event drew more than 1,300 alumni and friends

to 20 sites spanning four countries, making it the Alumni Association's third largest event, behind Alumni Weekend and Global Day of Service, in its inaugural year

- Prepared and monitored program budget

Manager, Student and Young Alumni Giving Programs, Annual Fund

2009 to 2011

- Directed all aspects of the class gift campaign, increasing the participation rate by an average of ten percent each year
- Designed and implemented annual fund leadership giving society levels for recent graduates, resulting in a 35 percent increase in leadership-level donors
- Recruited, trained, and provided support to volunteers
- Maintained website and Facebook page
- Cultivated relationships with on-campus partners to develop strategic engagement opportunities for volunteers
- Planned and executed events

Messing, Rudavsky & Weliky, P.C.

Boston, MA

Legal Intern

Aug. 2008 to Dec. 2008

- Executed initial intake procedure of prospective clients
- Managed partners' schedules
- Drafted and proofread general correspondence

Pomona College Office of Annual Giving

Claremont, CA

Assistant Director

Aug. 2006 to Aug. 2007

- Identified, cultivated, and solicited 5-figure gifts
- Recruited, trained, and provided support to volunteers
- Developed and implemented strategies to increase revenue and dollars
- Planned and executed events
- Prepared presentations, analyses, and reports for internal and external audiences

Carleton College Alumni Annual Fund

Northfield, MN

Assistant Director

June 2004 to Aug. 2006

- Directed operations for the student calling program, including hiring, training, supervision, and evaluation of 40+ callers and supervisors
- Recruited, trained, and provided support to class volunteers and annual fund board members
- Developed and implemented strategies to increase revenue and donors
- Identified, cultivated, and solicited 5-figure gifts
- Steered reunion volunteers to a record-breaking 5th reunion fundraising campaign, besting the previous 5th reunion record by 20%
- Directed millennial class gift committees to an average participation rate of 50%
- Planned and executed alumni events
- Prepared presentations, analyses, and reports for internal and external audiences

Education

Carleton College

Northfield, MN

Bachelor of Arts, Political Science

Suffolk University Law School

Boston, MA

Juris Doctor (J.D.) (unconcluded)

Accepted to the Journal of High Technology Law (JHTL), one of Suffolk University Law School's five Honor Boards



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 082

**CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE
2022 MAR 17 P 12:11**

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby reappoint, subject to your review and recommendation, Danielle, Spang, Esq., 16 Mulberry Street to serve on the Beverly Harbor Management Authority.

Her term is to be effective until December 31, 2024.

Sincerely yours,

Michael P. Cahill
Mayor

Dear Mayor Cahill, Chief of Staff Ruelle-Kersker, Mr. Earl and Ms. Flaherty,

I'm writing to you because I'm interested in joining the Harbor Management Authority. I live in downtown Beverly with my husband and two kids (ages 5 1/2 and 2 1/2), and before having children I worked as a consumer attorney for people who were victims of identity theft or being harassed by debt collectors. I grew up in a coastal town in Kennebunkport, Maine, and have had a very strong affinity for the ocean/beaches/waterfront my whole life. Beverly's coastline and many beaches helped draw us to buy a home here, and are a large part of why we're committed to staying and raising our children in the community. I'd like to volunteer my time to help out the city, and appreciate your time and consideration of this request. Please reach out anytime if you have any questions or would like more information about me.

Best,
Danielle

Danielle M. Spang, Esq.
16 Mulberry Street, Beverly, MA 01915
207-590-0677
spang.danielle@gmail.com

Danielle M. Spang, Esq.

16 Mulberry Street
Beverly, MA 01915

Phone: (207) 590-0677
Email: spang.danielle@gmail.com

Education 2008-2012 Temple University: Beasley School of Law (Philadelphia, PA)
J.D., Magna Cum Laude

2000-2004 Muhlenberg College (Allentown, PA)
B.A. – Philosophy with Honors, Magna Cum Laude

Awards Denis Maguire Award from Volunteer Lawyers Project (2016)
Best Paper: *Constitutional Law, Federal Courts*
Noel R. and Edith Moyer Award in Philosophy (2004)

Experience Feb. 2014-Feb. 2017 Law Office of Danielle Spang (Cambridge, MA)
Attorney
Consumer protection sole practitioner, assisting clients who were harassed by collection agencies or had errors on their credit reports, and other general consumer matters. I also served as local counsel for federal cases filed in Massachusetts and Maine by Francis & Mailman, P.C. during this time.

Jun. 2013-Feb. 2014 Culik Law, P.C. (Woburn, MA)
Associate Attorney
Worked for consumer law firm, defending foreclosures and debt litigation.

Dec. 2012-Jun. 2013 Law Office of Danielle Spang (Somerville, MA)
Attorney
Assisted clients who were harassed by collection agencies or had errors on their credit reports, and other general consumer matters.

Aug. 2012-Dec. 2012 Moschella & Winston, LLP (Somerville, MA)
Secretary (temporary)
Worked for an elder law firm while waiting for bar results, covering their secretary's maternity leave.

Dec. 2004-May 2012 Francis & Mailman, P.C. (Philadelphia, PA)
Senior Paralegal, Litigation Paralegal
Worked full-time at a small consumer rights firm while attending law school.

Jun. 1997-Aug. 2004 City of Kennebunkport (Kennebunkport, ME) *Summers
Assistant Dispatcher / Part-time Dispatcher
Worked full-time during the summers of high school and college at my local police department – typing up reports, entering parking tickets into database, updating computer systems. At 18, went to the police academy to be a certified dispatcher and covered shifts when full-time dispatchers were out.



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 083

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY OF BEVERLY OFFICE
2022 MAR 17 P 12:11

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby reappoint, subject to your review and recommendation, Ms. Suzanne LaMont, 20 Porter Street to serve on the Beverly Historic District Commission.

Her term is to be effective from April 1, 2022 until April 1, 2025.

Sincerely yours,

Michael P. Cahill
Mayor



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 084

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE
2022 MAR 17 P 12:11

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby appoint, subject to your review and recommendation, Mr. Richard Tabbut, 57 Sonning Road, Beverly to serve on the Beverly Council on Aging.

His term is to be effective until June 30, 2024.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Cahill".

Michael P. Cahill
Mayor



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
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Fax (978) 922-0285*

NO. 085

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE

2022 MAR 17 P 12:11

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby appoint, subject to your review and recommendation, Ms. Hoang Sa Ngyuen, 32 Iverson Road Beverly to serve on the Human Rights Committee

Her term is to be effective from April 4, 2022 until April 4, 2025.

Sincerely yours,

Michael P. Cahill
Mayor



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 086

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

Dear Honorable City Council:

I hereby appoint, subject to your review and recommendation, the following residents to serve on the Permanent Building Commission:

Mr. Bruce MacDonald	8 Pillow Lace Lane
D. Scott Dullea, Esq.	36 Dane Street
Robin Luna-Whitman	12 Lothrop Street, #7

Their terms are to be effective until September 30, 2024.

Sincerely yours,

Michael P. Cahill
Mayor



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 087

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

2022 MAR 17 P 12:12
CITY OF BEVERLY
RECEIVED
CITY CLERK'S OFFICE

March 15, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

RE: RECOMMENDATION FOR THE ACCEPTANCE OF EASEMENT FROM CUMMINGS
PROPERTIES AT 50 DUNHAM ROAD

Dear Honorable City Council:

I respectfully request that the City Council vote to accept a Pedestrian Easement Agreement (an "easement") at 50 Dunham Road (aka 51 Dunham Ridge) for recreational / trail use purposes only. The easement will be located adjacent to the building Cummings refers to as 51 Dunham Ridge. As described in the attached letter from Jenna Pirrotta on behalf of the Conservation Commission, the requested easement is a condition of a September 12, 2014 Order of Conditions issued by the Commission. The easement will benefit residents and employees within the City of Beverly by providing additional access to the Norwood Pond trails behind Cummings Properties' Dunham Road holdings.

I support the Conservation Commission's recommendation. The easement request has been reviewed by the City Solicitor's office and the preferred easement location has been reviewed and approved by the Planning Board, the Conservation Commission, and the Planning Department.

Please feel free to contact me or Darlene Wynne, Planning Director, directly if you have any questions regarding this easement request.

Sincerely yours,

Michael P. Cahill
Mayor

cc: Darlene Wynne, AICP, Planning Director
Jesse Dole, Assistant City Solicitor
Jenna Pirrotta, Environmental Planner

Enclosures



**CITY of BEVERLY
CONSERVATION COMMISSION**

NO. 087

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 921-6187*

Mayor

Michael P. Cahill

Chairperson

Christine Bertoni

Vice Chairperson

Robert Buchsbaum

Members

David Alden- St. Pierre

Meghan Jones

William Squibb

Honorable City Council
City Hall
191 Cabot Street
Beverly, MA 01915

March 15, 2022

RE: Pedestrian easement at 50 Dunham Road, per Order of Conditions DEP File #5-1123

Dear Council Members,

The Conservation Commission issued an Order of Conditions on September 12, 2014, for the approval of the construction of the new 5-story mixed use building with associated site work at 50 Dunham Road (under DEP File #5-1123). Portions of the work are located within the 100-Foot Buffer to wetlands in the area of Norwood Pond. As part of the approval, the Commission issued several special conditions that the applicant must comply with. In particular, as part of the public hearing process for the original approval, the applicant discussed creation of a pedestrian easement and the Commission included this as Special Condition #6:

6. "Applicant shall enter into with city of Beverly, and record at the Essex South Registry of Deeds, a "Pedestrian Easement Agreement" which incorporates the substantive terms of the document submitted to the Commission on May 20, 2014. The easement shall grant the city and members of the public the right to pass and repass, by foot only and for recreational purposes only, through the proposed easement area depicted on plan C-1. Applicant shall coordinate same with Beverly Open Space & Recreation Committee."

Upon project completion and once all special conditions have been met, the applicant is required to seek a Certificate of Compliance from the Conservation Commission. As this pedestrian easement is a requirement of the Order of Conditions, I recommend that the Council vote to accept this pedestrian easement. This allows deeded access to the existing Norwood Pond trail system in this area and is a tremendous benefit for the public to enjoy passive recreation and nature observation activities.

The Commission members reviewed the easement location at their January 25, 2022 meeting, with no objection. At their February 15, 2022 meeting, the Planning Board voted unanimously to

approve the minor modification and accept the change to the Site Plan Review and Special Permit for the easement location.

Should you have any questions or need further information please do not hesitate to contact me in the Planning Department at jpirrotta@beverlyma.gov or (978) 605-2345. Thank you for your consideration in this matter.

Sincerely,



Jenna Pirrotta
Environmental Planner

cc: Darlene Wynne, Director of Planning and Community Development
Jesse Dole, Assistant City Solicitor

PEDESTRIAN EASEMENT AGREEMENT

This Pedestrian Easement Agreement is made this ____ day of March, 2022 by and between Dunham Ridge, LLC, a Massachusetts limited liability company having an address of 200 West Cummings Park, Woburn, Massachusetts (hereinafter "Grantor"), on the one hand, and the city of Beverly, a municipal corporation with an address of Beverly City Hall, 191 Cabot Street, Beverly, Massachusetts (hereinafter "Grantee"), on the other hand.

WHEREAS, Grantor is the owner of certain property (hereinafter "Grantor's Property") shown on a plan entitled "Phase 2, Dunham Ridge Condominium Phase Plan Dunham Road, Beverly, Mass.", dated February 1, 2017, prepared by Feldman Land Surveyors, recorded with the Essex (South) Registry of Deeds (the "Registry") at Plan Book 458, Page 5. For Grantor's title, see quitclaim deed recorded at the Registry at Book 35248, Page 229; and

WHEREAS, Grantor is desirous of granting, and Grantee is desirous of obtaining, pedestrian access to a portion of Grantor's Property to pass and repass by foot (only) along, over, upon, across, and through said portion of Grantor's Property.

NOW THEREFORE, for consideration paid and other good and valuable promises, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grantor grants to Grantee, its agents, employees, representatives, invitees, inhabitants, and to the public generally (the "Grantee parties"), a perpetual right and easement to pass and repass for recreational purposes by foot (only) along, over, upon, across, and through that portion of Grantor's Property more particularly shown as the "Pedestrian Easement Area" on that certain plan recorded with the Registry of even date herewith entitled "Plan Showing Pedestrian Easement Area", prepared by Cummings Properties, LLC, dated December 3, 2021. Nothing herein is intended or shall be construed to allow the parking and/or use of bicycles or motorized vehicles within the Pedestrian Easement Area, and any such parking or use is expressly prohibited.

2. To the extent permitted by law, Grantee hereby indemnifies and holds Grantor and Grantor's officers, employees, agents, affiliates, partners, representatives, successors, and assigns harmless from and against any and all actions, claims, demands, loss, injuries, liabilities involving personal injuries, property damage (including environmental damage), and death, to the extent related to, arising out of, and/or occurring during the access to or from and/or use of the Pedestrian Easement Area or the presence on Grantor's property by any Grantee party, or to the extent caused in whole or in part by the acts or omissions of any Grantee party and/or any successors and/or assigns thereof, now and at all future times. Any amount or obligation hereunder shall not exceed \$100,000 per claimant, including interest, cost, and attorneys' fees. This section (only) is subject to appropriation by the Beverly City Council and the decision to do so shall be in the sole discretion of the Beverly City Council.

3. Nothing in this easement agreement shall be construed to entitle or permit Grantee to bring any action against Grantor for any injury to or change in the Pedestrian Easement Area resulting from or in any way arising out of causes beyond Grantor's control including, but not limited to, fire, flood, storm, earth movement, and/or the acts of third parties, not caused by acts

or omissions of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate injury to the Pedestrian Easement Area and/or the remainder of Grantor's Property resulting from such causes.

4. Grantee, at Grantee's sole cost and expense, (i) shall maintain the Pedestrian Easement Area to keep it in a safe and passable condition, and (ii) may make improvements to the Pedestrian Easement Area (only) that are consistent with the use set forth above in Section 1. Any such maintenance and/or improvements by Grantee: (x) may include, but is not limited to, the clearing of brush and other obstructions, and the changing of grade and/or level, and (y) shall be performed in compliance with all applicable laws, rules, and regulations. Grantor will not unreasonably interfere with Grantee's maintenance of the Pedestrian Easement Area. Grantee will notify Grantor before performing any maintenance and/or improvements to the Pedestrian Easement Area.

5. Grantee shall secure and maintain at its own expense commercial general liability insurance providing coverage for bodily injury (including death) and property damage occurring in the Pedestrian Easement Area and arising out of the use, control, or condition of the Pedestrian Easement Area by any Grantee parties. Such policy shall name Grantor and Cummings Properties, LLC as additional insureds using standard endorsement ISO Form CG 20 26 11 85 or another form providing equivalent coverage and shall provide commercial general liability coverage in a minimum amount of \$1,000,000 for each occurrence involving bodily injury (including death) and \$1,000,000 for each occurrence involving property damage. This insurance shall be primary to and not contributory with any insurance carried by Grantor, whose insurance shall be excess. Prior to any use of the Pedestrian Easement Area by any Grantee parties, Grantee shall deliver to Grantor a copy of such policy together with the declarations page and all applicable riders and endorsements, showing that such insurance is in force, and thereafter will deliver, prior to the expiration of any such policy, notice of renewal of same. In the event any such policy or coverage changes, a copy of the policy, together with the declarations page and all applicable riders and endorsements, shall be delivered to Grantor within 10 days of such change. Notwithstanding any other term herein, Grantee's rights in Section 1 shall be automatically suspended upon the cancellation, expiration, or other termination of the Grantee's insurance hereunder, and shall be automatically reinstated when the required insurance is reinstated and proof of same delivered to Grantor.

6. Grantor reserves the right for itself and its officers, employees, agents, managers, affiliates, representatives, tenants, licensees, callers, invitees, successors and assigns to use all or any portion of the Pedestrian Easement Area for any lawful activity and/or purpose, including without limitation the installation and maintenance within the Pedestrian Easement Area of any and all utilities to service Grantor's Property, including without limitation gas, water, sewer, electric, and/or telecommunications service and storm water drainage, so long as such activity/ies does/do not materially interfere with Grantee's use and enjoyment of the easement herein granted. Grantor will notify Grantee before any installation by Grantor of any and all utilities within the Pedestrian Easement Area to service Grantor's Property.

7. All the rights, burdens, benefits, and obligations conferred herein shall inure to the benefit of and be binding upon Grantor, Grantee, and their respective successors, heirs, and assigns, and shall run with the land.

8. Grantor, at Grantor's sole expense, may at any time relocate the Pedestrian Easement Area and any or all facilities thereon or thereunder to another portion of Grantor's Property and/or alter the dimensions of the Pedestrian Easement Area provided that such relocation and/or alteration does not significantly lessen the utility of the Pedestrian Easement Area, increase the burdens on the Grantee's use and enjoyment of the Pedestrian Easement Area, or frustrate the purpose set forth above in Section 1. Grantee and/or its successors or assigns agrees to promptly execute and deliver to Grantor all documents required or reasonably requested to effectuate any such relocation and/or alteration. Grantor will notify Grantee before any such relocation.

9. Grantee hereby accepts the foregoing easements subject to any and all conditions and restrictions contained herein.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal the day and year first written above.

DUNHAM RIDGE, LLC

By: _____
William F. Grant, Manager

By: _____
Dennis A. Clarke, Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March __, 2022

Before me appeared the above-named William F. Grant and Dennis A. Clarke, each personally known to me to be the persons whose names are subscribed to the within instrument and each acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which each such person acted, executed the instrument as his free act and deed.

Notary Public

My commission expires: _____

ACCEPTANCE OF GRANT AND TERMINATION

I, Michael P. Cahill, Mayor of the city of Beverly, certify my acceptance on behalf of the city of Beverly and its inhabitants of the within grant of easement, including the conditions and restrictions set forth therein.

My acceptance of the above-described grant is pursuant to and in accordance with a vote of the Beverly City Council dated _____, 2022.

CITY OF BEVERLY AND ITS INHABITANTS,

By: _____

Michael P. Cahill, Mayor

COMMONWEALTH OF MASSACHUSETTS

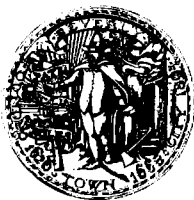
Essex, ss

March __, 2022

Before me appeared the above-named Michael P. Cahill, Mayor of the city of Beverly, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person, or the entity and inhabitants of the city of Beverly upon behalf of which and whom the person acted, executed the instrument as his free act and deed.

Notary Public

My commission expires: _____



**CITY of BEVERLY
OFFICE of THE MAYOR**

*191 Cabot Street
Beverly, Massachusetts 01915
Phone (978) 921-6000
Fax (978) 922-0285*

NO. 088

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE
2022 MAR 17 P 12:12

Mayor

Michael P. Cahill

Chief of Staff

Joscelyn Ruelle-Kersker

Executive Secretary

Martha A. Lewis

March 16, 2022

The Honorable City Council
City Hall
Beverly, MA 01915

- RE: (1) Order approving Lease with Kearsarge, Beverly LLC for 90 Colon Street, 191 Cabot Street, 10 Pond Street, 11 Pond Street, 502 Cabot Street, and 100 Sohier Road, Beverly, Massachusetts for Solar Photovoltaic Array installation;**
- (2) Order approving Solar Power and Services Agreement with Kearsarge, Beverly LLC; and**
- (3) Order approving Payment in Lieu of Taxes Agreement with Kearsarge, Beverly LLC for personal property**

Dear Honorable City Council:

Enclosed please find three (3) orders seeking authorization for the City to proceed with a multi-site solar project with a solar development entity known as Kearsarge Beverly, LLC ("Kearsarge"):

1. Order Authorizing Lease of Land and grant of easements appurtenant thereto to Kearsarge, with proposed lease attached;
2. Order Authorizing Solar Power & Services Agreement with Kearsarge, with proposed agreement attached; and
3. Order Authorizing Payment In Lieu of Taxes Agreement with Kearsarge relating to personal property, with the proposed PILOT agreement attached.

Kearsarge intends to install and operate solar photovoltaic systems on the following sites:

- Beverly High School, 100 Sohier Rd. (canopy and ground-mount)
- Beverly Middle School, 502 Cabot St. (rooftop and canopy)

- City Hall, 191 Cabot St. (rooftop)
- Senior Center, 90 Colon St. (rooftop)
- 10 & 11 Pond Street parking lots (canopy)

Collectively, the size of the systems is anticipated to be 4.3 mega-watt DC.

The proposed lease term is twenty (20)-years with a five-year renewal term by mutual agreement. Combined, the lease and PILOT payments over the 20-year term will generate revenue for the City in the amount of approximately one million, eighty-one thousand, seven hundred eighty three dollars (\$1,081,783). The City's anticipated electricity cost savings over the twenty-year term is approximately nine hundred thirty-seven thousand, fifteen dollars (\$937,015).

Representatives from Kearsarge have been invited to attend the March 21, 2022 meeting to make a presentation regarding this project. Appropriate members of City staff will be available to answer questions.

Sincerely yours,



Michael P. Cahill
Mayor

Attachments

Order Authorizing Lease of Property and Grant of Easements Appurtenant thereto

The Mayor, on behalf of the City, is authorized to enter into and execute a lease of land on behalf of the City with Kearsarge Beverly, LLC, leasing portions of certain parcels of land at 90 Colon Street (rooftop), 191 Cabot Street (rooftop), 502 Cabot Street (rooftop, canopy), 10 Pond Street (canopy), 11 Pond Street (canopy), and 100 Sohier Road (canopy, ground). The lease is for the purpose of Kearsarge's installation, maintenance, and operation of solar photovoltaic systems for an initial 20-year term, with the option of a 5-year extension term. Said lease includes the grant of easements necessary for the installation, maintenance, and operation of the systems. The lease is attached hereto.

This Order further authorizes the Mayor to execute any formalities relative to the lease including the revision of any scrivener or clerical errors and edits that do not materially change the substance of the agreements. This authority is given in accordance with Massachusetts General Law Chapter 40, Sections 3 and 15 any other applicable law of the Commonwealth.

LEASE AGREEMENT

This Lease Agreement (as the same may hereafter be amended, modified and/or extended, from time to time, collectively this "Lease") is entered into by and between the City of Beverly, a Massachusetts municipal corporation acting with a principal place of business at 191 Cabot Street, Beverly, Massachusetts 01915, its successors and/or assigns ("Lessor"), and Kearsarge Beverly LLC, a Massachusetts limited liability company with a principal place of business at 1380 Soldiers Field Rd, Suite 3900, Boston, MA 02135 ("Lessee"). Lessee and Lessor are each a "Party" and collectively, the "Parties." The effective date of this Lease shall be deemed to be the date upon which both Parties execute this Lease ("Effective Date"). Said date shall be inserted in the following space once both Parties sign:
February __, 2022.

Recitals

- A. Lessor is the owner of certain parcels of land with the improvements thereon located at 90 Colon Street, 191 Cabot Street, 10 Pond Street, 11 Pond Street, 502 Cabot Street, and 100 Sohier Road, Beverly, Massachusetts, and described more particularly on Exhibits A-1, A-2, A-3, A-4, A-5 and A-6 attached hereto (the "Property");
- B. Lessor issued a Request for Proposals (the "RFP"), soliciting proposals for the lease of a portion of the Property (the "Lease Area", as further defined below) for the purpose of installing and operating a solar photovoltaic system on the Lease Area and for the sale of kilowatt hours of solar energy generated by such system to Lessor.
- C. Lessee, by and through its affiliate, Kearsarge Solar LLC, submitted a proposal in response to the RFP and Lessor accepted that proposal subject to certain terms and conditions.
- D. Lessor is authorized to enter into this Lease for the lease of public space to Lessee for the construction and operation of solar photovoltaic systems provided that the Parties enter into a separate Solar & Power Services Agreement ("SPSA").
- E. Lessee intends to install and operate one or more solar photovoltaic systems, including all improvements thereto as more specifically described in Exhibits B-1, B-2, B-3, B-4, B-5 and B-6 attached hereto (collectively, the "System") on a portion of the Lessor's Property for the purpose of generating electrical energy from the System and providing the electric energy to the Lessor pursuant to the SPSA.
- F. Unless otherwise expressly provided herein, capitalized terms used in this Lease shall have the meaning ascribed to them in the as set forth in Exhibit E.

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Lease Area.

1.1 The Lease Area. Lessor, for and in consideration of the covenants and agreements on the part of Lessee contained in this Lease, does hereby lease unto Lessee, and Lessee does hereby lease from Lessor, upon and subject to the conditions expressed in this Lease, a certain portion of the Property referred to as the "Lease Area," as preliminarily described in the leasehold plans attached hereto as Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4, Exhibit B-5 and Exhibit B-6, incorporated herein and which will be more particularly identified and described in leasehold plans to be prepared by the Lessee in connection with the Parties' satisfaction of the Term Commencement Obligations, for the sole and exclusive purpose of installing, constructing, operating, maintaining, repairing and removing the System including, but not limited to the System assets, that produces the electricity sold and purchased under the SPSA, and for uses incidental thereto and for no other purposes. As more particularly provided in Section 3.1, upon the Lessee's preparation of the aforementioned leasehold plans and the Parties' achieving agreement with respect to the location and size of the Lease Area, the Parties shall replace the preliminary leasehold plans attached hereto as Exhibits B-1 through Exhibit B-6 with such final, agreed upon leasehold plans of land. The Lease Area includes a non-exclusive access easement over the Premises and the Remaining Property (each as defined below) to the point of interconnection of the System with the electric grid, which easement will also allow Lessee to install, operate and maintain its cables and related equipment for the System necessary to reach such point of interconnection to the System. Lessee shall provide Lessor prompt notice of the local electric utility's grant of approval to interconnect the System to the electric grid, and the exact locations for the installation of the cables and related equipment necessary to support the Systems (such area shall be referred to as, the "Cable Area"). The Lease Area, including the Cable Area and Access Road (as defined in Section 1.2(a)) are collectively referred to herein as the "Premises." The Parties agree to amend Exhibits B-1 through B-6 (as applicable) if any Cable Areas are hereafter included in the Lease Area which are not located as preliminarily set forth in Exhibits B-1 through B-6, and such amended exhibits, upon attachment hereto, shall be incorporated into this Lease. The Property, excluding the Lease Area, is referred to as the "Remaining Property."

1.2 Appurtenant Rights. Lessor further grants to Lessee, during the period commencing on the Term Commencement Date of this Lease and ending upon the expiration or earlier termination of this Lease, along with the additional time for the removal of the System and restoration of the Premises under Section 16, the following:

(a) If the Lease Area (or any portion thereof) does not abut a public way, a non-exclusive right of access to the Lease Area across or through the Remaining Property which is necessary to gain access to the System as more specifically identified in the plans attached hereto as Exhibits B-1 through B-6;

(b) The exclusive use of, and right to develop, design, install and operate the System within the Premises, and the exclusive right to maintain, operate, repair and replace

the System throughout the Term of this Lease, subject to the terms of this Lease and the SPSA;

(c) A right of access over and upon the Property for the installation, operation, and maintenance of electric lines necessary to interconnect the System to the local electric utility's electric distribution system as more specifically identified in the plan attached hereto as Exhibits B-1 through B-6;

(d) With respect to each part of the Lease Area that is located on the roof of a building on the Property (as more particularly set forth in Exhibits B-1 through B-6), a right of access in and through each building for access to the roof thereof and for the installation, operation, and maintenance of the System, subject to reasonable safety and security measures related to such access imposed by the Lessor;

(e) With respect to each part of the Lease Area that is located on the roof of a building on the Property (as more particularly set forth in Exhibits B-1 through B-6) and to the extent not included in the Cable Area and reasonably deemed necessary by the Lessee, a right to use certain other areas of such building for the installation and maintenance of wires, cables, and other utility connections as are necessary to connect the System located on such roof to the utility grid, such other areas being subject to the reasonable approval and safety and security measures of the Lessor; and

(f) To the extent requested by Lessee and reasonably necessary, and subject to Applicable Legal Requirements (as defined in Section 2) and available space, as determined in Lessor's sole discretion, Lessor shall provide necessary space on the Remaining Property at locations specified by Lessor for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and (v) other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Lessee shall not obstruct access to the Remaining Property, or interfere with or disrupt Lessor's use thereof or operations therein, if any, nor the utility, mechanical, electrical, and other systems installed or located on the Property and used in connection therewith ("Lessor Existing Uses"). Lessee shall immediately restore the Remaining Property to the condition it was in prior to Lessee's use.

1.3 Condition of Premises. Lessee accepts the Premises in its "AS IS" condition, after a full and complete examination of the Premises and the title thereto, and knowledge of its past and present uses and non-uses of the Premises. Lessee accepts the Premises in the condition and state in which the Premises are in as of the Effective Date without any representation or warranty, express or implied in fact or by law, by Lessor, and without any recourse whatsoever against Lessor as to the title thereto (except to the extent that Lessor's failure to have title to the Premises results in a breach hereunder), and as to the nature, condition or usability of the Premises, and as to the use or uses to which the Premises or any part thereof have been and for the Permitted Uses (defined below). Lessor is not required to

furnish any services or facilities or to make any repairs or alterations in or to the System or the Premises.

1.4 Utilities. Lessee shall be solely responsible for providing, and paying for, all electrical and other utilities of sufficient capacity to serve Lessee's Permitted Uses, defined in Section 2 below. The System shall be installed in accordance with Applicable Legal Requirements and the reasonable requirements of Lessor, and in a manner that avoids material interference to or disruption of Lessor Existing Uses. The Lessor acknowledges and agrees that a portion of the System will be installed upon canopies to be constructed on certain parking lots constituting portions of the Property. Lessee shall coordinate the installation with Lessor and shall take all reasonable measures, as directed by Lessor or otherwise, to minimize any interference with the Lessor Existing Uses of such parking lots, which disruption will not be deemed to be a violation by or breach of the Lessee of the terms and conditions of this Lease. Lessor shall have no duty or liability to Lessee with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, but not limited to, any electrical transmission or distribution lines, whether such lines are owned by Lessor or any third party. Nor shall Lessor have any liability to Lessee for any damages, including, but not limited to, lost revenue, arising from Lessor's actions or omissions regarding any such maintenance, repair, upgrade, replacement or security. In the event Lessee desires to undertake any maintenance, repair, upgrade, replacement or security of any electrical transmission or distribution lines owned by Lessor, Lessee may do so at its cost and expense, but only with the advance written approval of Lessor.

2. Permitted Uses. Lessee shall use the Premises solely for the purpose of inspecting, obtaining permitting for, constructing, installing, operating, maintaining, repairing, removing and replacing the System in accordance with the SPSA, this Lease, Applicable Legal Requirements (defined below, the "Permitted Uses") and the requirements, orders and permits of any US federal, state, local or municipal government having jurisdiction over the Premises, the Property, or the System (including any department, municipal utility, commission, board, agency, bureau, political subdivision, instrumentality, official or other regulatory administrative or judicial authority, to the extent that the rules and regulation of such body have the force of law, collectively, the "Governmental Authority") specifically including any land use and zoning approvals required for the System and use related governmental requirements incidental thereto (collectively, "Land Use Approvals"). Lessee's use of and activities on the Premises shall at all times conform to Applicable Legal Requirements. Absent written approval by the Lessor, which may be withheld in Lessor's sole and absolute discretion, Lessee shall not use the Premises for any use other than the Permitted Uses. "Applicable Legal Requirements" means any statute, law (including common law), act, rule, requirement, order, ordinance, regulation, judgment, decree, injunction, permit or other binding requirement or determination of or by any Governmental Authority, which are at any time applicable to a Party's rights and obligations hereunder.

Lessee agrees that its use of the Premises is subject to, among other things, compliance with the terms and conditions of the SPSA, and all Applicable Legal Requirements, including, but not limited to, present and future laws, regulations, ordinances (including zoning),

resolutions, and regulations of the municipality in which the Premises is located, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, bodies, committees, and departments of any municipal, county, state or federal authority, agency or governmental body regulating the use of the Premises. Lessee further agrees that the Permitted Uses are subject to its strict and full compliance with all such Applicable Legal Requirements related to the Permitted Uses.

3. Term.

3.1.1 Initial Term. The term of this Lease shall commence on Term Commencement Date (as defined in this Section 3.1.2) and, unless earlier terminated in accordance with the provisions of the SPSA or this Lease, shall terminate on the last day of the month after the twentieth (20th) annual anniversary of the Commercial Operation Date (the "Initial Term"). Notwithstanding anything to the contrary in this Lease, the termination of the Lease shall result in the automatic and simultaneous termination of the SPSA.

3.1.2 The "Term Commencement Date" means the date that is thirty (30) days from the date upon which all of the following conditions precedent have been satisfied (collectively, the "Term Commencement Obligations"): (a) the Lessee has prepared and submitted to the Lessor leasehold plans for the Lease Area, the Lessee and the Lessor have mutually agreed upon the location and size of the Lease Area, and the Parties have attached hereto as Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4, Exhibit B-5 and Exhibit B-6 (as replacement of the preliminary leasehold plans referenced in Section 1.1) leasehold plans which describe the Lease Area in such detail as shall permit the Parties to record a notice of lease pursuant to Section 18.18 and the Lessee to obtain an owner's leasehold title insurance policy with respect to the leasehold estate created hereby; (b) the Parties have executed a mutually agreeable SPSA; (c) the Lessee has received all zoning, site plan, and Land Use Approvals licenses, permits, and approvals from Governmental Authorities required for the construction and operation of the System; (d) the Lessee and the Local Electric Utility have entered into an interconnection agreement permitting the Lessee to interconnect the System with the local electric utility's grid; (e) the Lessee has received a binding financing commitment from a Permitted Institutional Mortgagee (as defined in Section 14.1) for the construction of the System containing terms acceptable to the Lessee; (f) if required by the Lessee, the Lessee has elected to complete and has completed any subsurface and/or structural testing of the Lease Area required by the Lessee (g) the Lessee has obtained an examination of the record title to the Property, and such examination is satisfactory to the Lessee; (h) the Lessee has received the preliminary statement of qualifications under the Solar Massachusetts Renewable Target Program with respect to the System ; and (i) the Lessee and the Lessor have entered into structured agreements for payment in lieu of taxes with respect to the Lessee's tax obligations regarding the Lease Area and the System.

To the extent not already provided herein, the Lessor will grant to the Lessee by separate agreement the right to access the Property and the Lease Area to allow the Lessee to satisfy its obligations with respect to the Term Commencement Obligations.

The LESSOR hereby grants permission to the LESSEE and the LESSEE's agents, consultants and designees to enter upon the Premises during the term of this Lease to conduct such surveys, inspections, soil and percolation and other tests that the LESSEE may elect to perform in connection with its due diligence review and permitting efforts, or otherwise. All such tests, inspections and access shall be at the LESSEE's sole risk, cost, expense and liability and the LESSEE agrees to indemnify, defend and hold the LESSOR harmless from any claim, liability or expense arising out of same, and after any such inspections or access to leave the Premises in a safe and secure condition. LESSEE shall not be liable, however, for the costs and expenses for existing conditions or to clean up or otherwise remove any Hazardous Materials which have been disclosed by LESSEE's due diligence. The LESSOR further agrees to furnish LESSEE with any and all instruments, documents and other written data and materials pertaining to the Premises, if any, that the LESSEE from time to time may reasonably request in connection with its due diligence review, including without limitation plans and surveys, archeological reports, environmental assessments, title instruments and documentation relating to any existing permit requirements applicable to the Premises. As set forth in Section 5.3, LESSEE shall provide the LESSOR with advance notice of any need to access the Premises and shall access the Premises only at times designated by the LESSOR and in the company of a LESSOR representative. The LESSEE may request and the LESSOR may agree, at its discretion, to waive the need for a LESSOR representative during or for any particular access. Such notice shall be sent to the Commissioner of Public Services, Michael P. Collins, at mcollins@beverlyma.gov or by contacting the Commissioner at 978-921-6053, or by contacting his designee. Such access shall not be unreasonably conditioned, withheld, or delayed. While at and about the Premises, LESSEE shall, in addition to any other requirements contained herein, comply with all applicable laws and regulations, and shall not interfere with any operations of the LESSOR or of any other third party. LESSEE shall notify the LESSOR in writing in advance of any proposed testing at the Premises, and LESSEE shall provide LESSOR with copies of all data and reports produced by LESSEE in connection with any surveys, inspections and tests conducted pursuant to the permission herein granted.

3.1.3 The "Commercial Operation Date" shall be the Incentive Payment Effective Date" as defined in **Exhibit E**.

3.1.4 (a) From and after the Effective Date, the Parties shall use good faith, diligent, and commercially reasonable efforts to satisfy their respective obligations under and with respect to the Term Commencement Obligations.

(b) In connection with such efforts, the Lessee shall obtain (i) the results of any subsurface and/or structural testing under the foregoing clause (f) which the Lessee elects in its discretion to complete and (ii) the examination of the record title to the Property under the foregoing clause (g), each within ninety (90) days of the Effective Date.

3.1.5 Upon the satisfaction of all of the Term Commencement Obligations prior to the occurrence of the Term Commencement Deadline (as defined below), the Lessee shall promptly deliver written notice to the Lessor of the satisfaction of the Term Commencement Obligations and the date of the Term Commencement Date.

3.1.6 In addition to other rights of the Lessee to terminate this Lease set forth herein, if any, and so long as the Lessee has used good faith, diligent, and commercially reasonable efforts to satisfy its obligations under and with respect to the Term Commencement Obligations, the Lessee may, upon written notice to the Lessor, elect to terminate this Lease if (i) the Term Commencement Obligations have not been satisfied by the date that is twelve (12) months from the Effective Date (the "Term Commencement Deadline," which term shall mean and include any extensions of such 12-month period set forth herein for any reason, and the Lessee has delivered such written notice of termination to the Lessor within ten (10) days of the occurrence of the Term Commencement Deadline, (ii) any Governmental Authority has denied or rejected the Lessee's application for any of the zoning, site plan, or Land Use Approvals licenses, permits, and approvals required for the construction and operation of the System, and either (a) the Lessee has elected not to appeal any such denial or rejection and has delivered such written notice of termination to the Lessor by the date that is thirty (30) days from any such denial or rejection or (b) the Lessee has elected to appeal any such denial or rejection, the Lessee's appeal has been denied or rejected, and the Lessee has delivered such written notice of termination to the Lessor by the date that is thirty (30) days from any such denial or rejection of its appeal, (iii) the Lessee determines, in its reasonable discretion, that the results of any subsurface and/or structural testing of the Property commissioned by the Lessee make the construction and operation of the System financially infeasible, and the Lessee has delivered such written notice of termination to the Lessor by the date that is thirty (30) days from the Lessee's receipt of the results of such subsurface and/or structural testing, or (iv) the Lessee determines, in its reasonable discretion, that any matters of record reflected in any examination of the record title to the Property would materially interfere with the construction and operation of the System, and the Lessee has delivered such written notice of termination to the Lessor by the date that is thirty (30) days from the Lessee's receipt of the results of such title examination. The right to terminate under subsections (iii) and (iv) is only available if the Lessee complies with section 3.1.3(b) herein. If the Lessee timely elects to terminate this Lease pursuant to this Section 3.1.5, this Lease shall terminate, and the Parties shall, upon such termination, have no further obligations hereunder except those which survive expiration or termination of this Lease in accordance with the terms hereof.

3.1.7 If (a) the Parties have satisfied all of the Term Commencement Obligations, except that the Lessee and the local electric utility have not entered into an interconnection agreement permitting the Lessee to interconnect the System with the local electric utility's grid, (b) the Lessee has used good faith, diligent, and commercially reasonable efforts to cause the local electric utility to enter into such interconnection agreement, and (c) no Event of Default by the Lessee then exists, the Lessee may elect to extend the Term Commencement Deadline by twelve (12) months by delivering written notice of such election to the Lessor not less than fifteen (15) days prior to the occurrence of original Term Commencement Deadline, whereupon the Term Commencement Deadline shall mean and refer to the date that is twenty four (24) months from the Term Commencement Date. If (a) the Lessee timely elects to extend the Term Commencement Deadline to the date that is twenty four (24) months from the Commencement Date, (b) the Lessee and the local electric utility have still not entered into an interconnection agreement permitting the Lessee to interconnect the System with the local electric utility's grid, (c) the Lessee has used good faith, diligent, and commercially reasonable efforts to cause the local electric utility to enter into such interconnection agreement, and (d) no Event of Default by

the Lessee then exists, the Lessee may request that the Lessor enter into good faith negotiations with the Lessee for an additional extension of the Term Commencement Deadline by delivering written notice of such election not less than fifteen (15) days prior to the occurrence of the extended Term Commencement Deadline. The Lessor may, but is not obligated to, enter into such negotiations with Lessee.

The Lessor may elect to terminate this Lease if the Term Commencement Obligations have not been satisfied by the date that is eighteen (18) months from the Effective Date.

3.2.1 After the Initial Term, to the extent permitted by Applicable Law, including procurement laws, as of such date, the Lease may be extended for one five (5) year term (a "Renewal Term") by mutual agreement as provided herein. At least one hundred and eighty (180) days, but no more than three hundred and sixty-five (365) days, prior to the expiration of the Initial Term, Lessee shall give written notice to Lessor if it wishes to renew the Lease for the Renewal Term. Lessor shall have ninety (90) days from receipt of such written notice to agree to continuation of the Lease for the Renewal Term. Absent agreement to the Renewal Term this Lease shall expire on the 20th anniversary of the Commercial Operation Date. If the Lessee is in default under the Lease it shall not have a right to seek renewal.

3.3 [Intentionally omitted].

3.4 Holdover. If Lessee or any party claiming by, through or under Lessee, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then Lessor may, at its option, serve written notice upon Lessee that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Lessee shall also pay to Lessor all damages sustained by Lessor resulting from holding over of such possession by Lessee. Lessee hereby agrees that the provisions of this Section shall not constitute a waiver by Lessor of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Base Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Lessor's right to terminate this Lease for Lessee's holding over.

4. Rent.

4.1 Base Rent. Beginning on the Commercial Operations Date achieved for any location that is part of the System Lessee shall pay Lessor without notice or demand therefor and without any deduction or set-off whatsoever, except as expressly otherwise provided herein, annual rent in the amount of the Lease Payment shown in Exhibit C to this Lease (the "Base Rent"), to be paid, in advance, on February 1st of each year for the ensuing years. If the Commercial Operation Date is on any day other than February 1st, the Base Rent and other charges shall be prorated on a per diem basis. The Base Rent shall be exclusive of any Additional Rent, as defined below. Beginning on the first (1st) anniversary of the payment of Base Rent and continuing on each anniversary thereof throughout the remainder of the Term, as it may be extended, the annual Base Rent payable hereunder shall increase by two percent (2%) over the Term payable during the immediately prior year.

(a) **Planning, Development and Construction Period Rent Payments:** Commencing on the Effective Date, Lessee shall pay Lessor a monthly Planning, Development and Construction Period Rent Payment ("Construction Period Rent") in the amount of \$1,000, which shall continue and be due and payable thereafter in advance on the first day of each calendar month thereafter until the System installations have all reached their Commercial Operation Date. In the event the Effective Date is not the first day of a calendar month, the Construction Period Rent shall be prorated on a per diem basis for the first month.

4.2 **Additional Rent.** On and from the Effective Date, Lessee shall pay or cause to be paid as "Additional Rent," before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, any and all Governmental Charges (including but not limited to assessments, taxes, charges, utilities of every kind or nature provided to the Premises, excises, levies, and license and permit fees) relating or attributable to Premises, the System, and/or Lessee's Permitted Uses and/or the System, whether or not the Governmental Charges are assessed directly against Lessee or through (or in the name of) Lessor, including real or personal property taxes, or payments pursuant to a structured agreement for payment in lieu of taxes payable by Lessee in accordance with the terms of the RFP, it being the intention and purpose of this Lease, and the agreement of the Parties, that the Base Rent shall be absolutely net to Lessor so that this Lease shall yield net to Lessor the Base Rent specified herein, and that all costs, expenses, and obligations, of every kind and nature whatsoever relating to the Premises and the Permitted Uses which may arise or become due during the Term shall be paid or discharged by Lessee as Additional Rent, except as expressly provided in this Lease and the SPSA. Base Rent, Additional Rent and any and all sums to be paid to Lessor by Lessee under the terms of this Lease are referred to collectively as "Rent."

The foregoing notwithstanding, Lessee shall have the right, in its own name, to contest the validity or amount, in whole or in part, of any of the Governmental Charges by appropriate proceedings timely instituted, provided such Lessee takes all actions (including payment of the same) to stay or prevent any official or judicial sale of the Premises, or any part thereof, by reason of nonpayment of any imposition. In addition to any other rights and remedies available to Lessor, Lessee shall defend, indemnify and hold harmless Lessor from any costs and expenses related to any such contest, including reasonable attorneys' fees, and Lessee shall promptly pay any valid final adjudication enforcing any Governmental Charges, failing which Lessor shall have the right to deduct such charge from amounts otherwise due Lessee under the SPSA.

4.3 **General Rent Provisions.** Base Rent shall be payable in advance by Lessee to Lessor annually during the Term of this Lease and for so long as Lessee remains in possession of the Premises. Unless otherwise agreed in writing by the Parties, all Rent and other payments required to be made by Lessee to Lessor under this Lease shall be paid by check payable to the "City of Beverly" and delivered to Lessor at the address set forth below, or at such other place as Lessor may from time to time direct by written notice to Lessee.

4.4 Interest. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by Lessor at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor or similar national bank plus two (2) percent.

5. System Construction, Installation and Operation.

5.1 Installation Work.

A. Subject to the terms of the SPSA and Lease, and Applicable Legal Requirements, Lessor hereby consents to the installation and construction of the System by Lessee on the Premises, including, without limitation, the installation of solar panels, mounting substrates or supports (including, without limitation, canopies with respect to any parking lots constituting part of the Property), wiring and connections, power inverters, service equipment, metering equipment and utility interconnections ("Installation Work"). No Installation Work shall occur until Lessee has obtained all Land Use Approvals necessary for that work, permits and approvals of any Governmental Authority, and until Lessor has approved the plans and specifications under Subsection C, below. Lessee will be responsible for obtaining and maintaining, at its sole cost and expense, all Land Use Approvals, including but not limited to all permits necessary for the Installation Work and any and all other improvements on or at the Premises. Notwithstanding anything to the contrary herein, the execution of this Lease does not to any extent provide a waiver of any permit or approval Lessee may require from the City of Beverly. Any topsoil at the Premises which is disturbed, excavated or displaced as part of the Installation Work shall remain the property of Lessor and shall not be removed or relocated from the Premises except in accordance with and after permission and direction of Lessor, which direction the Lessor shall provide promptly so as not to materially hinder the Installation Work.

B. Before commencing the Installation Work and within the period established by section 3.1.2, Lessee shall carefully evaluate the Premises and site of the proposed System, including a subsurface analysis of the Lease Area, and Applicable Legal Requirements to determine whether, in Lessee's opinion, the Premises is ready and in a condition appropriate to receive the System. The Lessee, at its own cost, shall (a) obtain a structural analysis of the Premises by a Massachusetts registered professional engineer to determine feasibility and safety requirements of the Installation Work referenced in section 5.1 below, and to ensure the proper installation, maintenance, and operation of the System. Lessee shall provide a copy of the structural engineering analysis to Lessor. Lessor shall reasonably assist Lessee in its assessment and planning, and shall provide Lessee with applicable documents in Lessor's possession. Lessee shall coordinate with the roofing manufacturer and/or installer for any part of the Premises that includes a roof to ensure that the Installation Work and the System do not invalidate any warranties provided by such roofing manufacturer and/or installer, and shall provide written confirmation of same by way of a pre-Installation Work and post-Installation Work inspection report, and (b) have performed a subsurface analysis of the Lease Area. Lessee shall notify Lessor in writing before any Installation Work commences if Lessee has

determined that the Premises is not ready or is not in a condition appropriate to receive the System.

C. Notwithstanding anything to the contrary in the Lease or SPSA, at least thirty (30) days before commencing the Installation Work, Lessee shall submit to Lessor for Lessor's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, copies of all design plans, drawings, specifications, and detailed schedules for such work (collectively, the "Construction Plans"). If Lessor does not either approve or respond in writing with questions and/or comments to said Construction Plans within thirty (30) days of receipt of a complete set of said Construction Plans, the Construction Plans shall be deemed accepted. This review is in addition to, and not a limitation of, any regulatory review or process required by Applicable Legal Requirements or any Governmental Authority, including, but not limited to, any such review or process required by Lessor's Board of Health, Planning Board, Zoning Board of Appeals, and/or Building Department (as applicable). Lessee shall schedule a pre-construction meeting with Lessor at least thirty (30) days before commencement of any Installation Work at the Premises, and shall coordinate all such work with Lessor's Existing Uses. Lessee shall consult a landscape designer practicing in the general locality of Lessor prior to planting any vegetative screening as may be required by any Land Use Approvals. In connection with the Lessee's preparation and submission of Construction Plans, each of the Lessee and the Lessor shall designate a contact person to act for and behalf of such Party in connection with correspondences between the Parties, including, without limitation, any correspondence relative to the Lessor's review and approval of the Construction Plans.

D. Lessee will cause the System to be designed, engineered, installed, constructed, operated, maintained, monitored, tested and inspected in accordance with all Applicable Legal Requirements, the terms of the Lease and SPSA, applicable standards of care, prudent industry practices, and manufacturers' and construction contractors' warranties, instructions, specifications and recommendations, the Construction Plans, and shall pay for all costs and expenses arising therefrom. From and after the commencement of the Installation Work, Lessee shall keep Lessor informed on a weekly basis (which may be by electronic mail submissions) regarding the progress, scheduling and coordination of the Installation Work. Subject to the Lessee's receipt of Land Use Approvals and other permits and approvals required therefor, Lessee shall undertake and prosecute the Installation Work using commercially reasonable and diligent efforts, and without unreasonable delay or interruption. Lessee shall pay or cause to be paid all undisputed claims made against it by its contractors, subcontractors, tradespersons and other third persons arising out of or in connection with Lessee's use of the Premises or the Property, and shall employ all reasonable efforts to cause its contractors and subcontractors to pay all such claims lawfully made against them.

E. Promptly following the completion of the Installation Work, Lessee shall provide Lessor with "as-built" drawings, stamped by a Massachusetts licensed professional architect or engineer, setting forth in detail the location of all components of the System, and shall provide Lessor with reasonable prior written notification, in no event less than fifteen (15) days in advance, regarding any substantial repair, modification, alteration, change or

replacement required with respect to any part of the System, together with plans, drawings and specifications for such repair or replacement for Lessor's reasonable approval, but only to the extent preparation of such plans, drawings and specifications are customarily prepared for such work, and if they are not, then Lessor will be provided with a written description of such work which again shall be subject to Lessor's reasonable approval in the same manner as was required for the Installation Work; provided, however, if the Lessee reasonably determines that any such repair, modification, alteration, change, or replacement is an emergency or is necessary to prevent damage to the System or injury to person or property, the Lessee may promptly perform such repair, modification, alteration, change, or replacement without the prior approval of the Lessor, but with notice to the Lessor within twenty-four (24) hours following the emergency event (which notice shall contain a reasonably detailed description of the emergency or necessity therefor). If Lessor does not either approve or respond in writing with questions and/or comments to such plans, drawings and specifications or written description (as applicable) with respect to any such repair, modification, alteration, change or replacement within twenty (20) days of receipt thereof, such plans, drawings and specifications or written description (as applicable) shall be deemed accepted. In addition, Lessee shall (1) provide persons designated by Lessor with training and instruction regarding the functions of the System and actions to be taken in the event of an emergency relating to the operation of the System or a risk of damage to property or persons as a result of such operation, and (2) submit for Lessor's approval a complete de-commissioning, removal and restoration plan covering all aspects of work required to dismantle and remove the System from the Premises and to restore the Premises to substantially the same condition it was in as of the Effective Date, reasonable wear and tear, casualty and condemnation excepted (the "De-commissioning and Removal Plan"). Operation of the System shall not be permitted until Lessor has approved such De-commissioning and Removal Plan, and Lessee shall modify the plan as reasonably required by Lessor. If no comments from Lessor are received within thirty (30) days after submission, then the De-commissioning and Removal Plan will be deemed accepted by Lessor. Upon the Lessor's approval or deemed approval of the De-commissioning and Removal Plan, the Parties shall attach the estimated costs of removal set forth in such plan to this Lease as Exhibit D.

5.2 Additional Rights. Subject to Applicable Legal Requirements and the terms of the SPSA and Lease, including Section 5.1 hereof, Lessee shall also have the right from time to time during the Term hereof in connection with this Lease, to (a) maintain, clean, repair, replace and dispose of part or all of the System; (b) to add to or remove the System or any part thereof; (c) perform, or cause to be performed, all tasks necessary to carry out the Permitted Uses or activities set forth in this Section 5; and (d) erect, install, and maintain security measures and systems (including fencing) as are included within the Construction Plans to prevent unauthorized access to the Systems.

5.3 Access to and Use of Premises. Subject to the terms of the SPSA and this Lease, and Applicable Legal Requirements, Lessee shall have access to the Premises for the purpose of performing the Installation Work and Permitted Uses and all other actions necessary to operate, maintain, repair and remove the System in accordance with the provisions contained in the

Lease and in the SPSA. Subject to reasonable security measures imposed by the Lessor, the Lessor shall provide to the Lessee a means of access to allow the Lessee to enter any building upon which the System has been installed. The Parties agree to develop access plans and schedules for each System installation location within 90 days of the Effective Date. No authority for access shall be given unless the Parties have agreed to such in advance of allowing access.

5.4 Mechanics Liens. Lessee shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed at the direction of Lessee, and shall cause any such lien to be released of record or bonded over, without cost to Lessor within thirty (30) days after Lessee receives notice of filing of same. In addition to any other rights and remedies available to Lessor, Lessee agrees to indemnify, save, defend, and hold harmless Lessor against, of and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting from a mechanic's lien.

5.5 Changes, Alterations. Lessee shall obtain Lessor's prior written consent, which will not be unreasonably withheld, and the approval of Lessor's Planning Board or other Governmental Authority in accordance with and to the extent required by any Land Use Approvals, prior to making any additions to the System. Lessee shall follow the review and approval procedures and standards set forth in this Section 5 to obtain Lessor's consent.

5.6 Insurance for Lessee's Work. During the performance of the Installation Work and any other improvements approved by Lessor, Lessee shall have and maintain in force public liability insurance naming the Lessor as additional insured, builder's risk insurance (with no exclusion for design or construction defects, errors or omissions), and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits, all in compliance with the provisions of Section 12.

5.7 Lessor Access/Inspection Rights/Notice of Damage.

A. Subject to reasonable security measures imposed by the Lessee, Lessor may, upon reasonable prior notice to Lessee, except in the case of an emergency, in which event Lessor will give notice as soon as practicable, enter upon any and all portions of the Premises for the purpose of ascertaining their condition or whether Lessee is observing and performing the obligations required by it under this Lease, and for the purpose of carrying out the Lessor's obligations with respect to maintenance and monitoring of the Premises and the operation, maintenance, and repair of Lessor's Existing Uses, if any, or as otherwise may be required by Applicable Legal Requirements. Lessee shall provide the Board of Health, the Commissioner of Public Services, and the Chief of Police with keys to any locked gates or other security measures limiting access to the Premises. If, at any time during the Installation Work, any City of Beverly inspector or code enforcement official determines that the work poses a safety risk to the City or its property or persons, they may issue a stop work order and the Lessee shall cease the

Installation Work until such time as the risk has been remediated or abated to the satisfaction of the official.

B. During the course of construction and any substantial alteration or modification of the System, Lessee shall maintain all plans, shop drawings, and specifications relating to such construction (to the extent Lessee is required to obtain such plans, drawings and/or specifications pursuant to the terms of this Lease or any Land Use Approvals) so that Lessor, its agents or contractors may examine at reasonable times upon reasonable prior notice.

C. Subject to reasonable security measures imposed by the Lessee, at any time, Lessor shall have the right, but not the obligation, upon reasonable prior notice to Lessee and without any hindrance by Lessee, to observe and inspect the System for any reasonable purpose.

D. Lessor shall have the right, upon reasonable prior notice to Lessee, to examine, during normal business hours, the System operational records in Lessee's possession, custody and control pertaining to Lessee's obligations under this Lease, the SPSA, and Applicable Legal Requirements.

E. Lessee shall immediately notify Lessor of any damage to or loss of use of the Premises or System, and of any events or circumstances of which Lessee is aware that may result in material or substantial damage or loss of use of the Premises or System.

5.8 Performance and Removal Surety. Lessee shall, at least thirty (30) days prior to the commencement of construction for the Installation Work, furnish to Lessor (a) a performance and payment bond(s) in the penal sum equal to 100% of the costs of the Installation Work to cover the Installation Work, and any other bonds or forms of security if so required in the SPSA, any Land Use Approvals and City of Beverly ordinances and regulations, which bonds shall name the Lessor and each Permitted Institutional Mortgagee as multiple obligees thereunder and may be maintained by any general contractor retained by the Lessee for the Installation Work (collectively, "Bonds for the Installation Work") and (b) at Lessor's option, a decommission surety bond(s) or an evergreen letter of credit naming the Lessor as beneficiary in the penal sum equal to 100% of the estimate proposed by the Lessee for removal of the System in accordance with the De-commissioning and Removal Plan and restoration of the Premises in accordance with the requirements of any Land Use Approvals (collectively "Bonds for the Removal Work"). Bonds and other forms of security shall be in the form reasonably satisfactory to Lessor, issued by sureties qualified to do business in Massachusetts (or, with respect to a letter of credit, issued by a financial institution reasonably approved by Lessor), and in amounts required in any Land Use Approvals. The Bonds for the Installation Work shall remain in effect until close out of the building permit and receipt by Lessor of the Notice of Commercial Operation to be issued by Lessee, unless (a) the Bonds for the Installation Work have been fully drawn upon earlier by Lessor, (b) Lessor has provided notice to Lessee of a dispute regarding the completion of the System in accordance with the provisions of this Agreement, in which case the Bonds for the Installation Work shall remain

in effect until the resolution of such dispute, (c) Lessor provides the issuer of the Bonds for the Installation Work written notice authorizing the earlier termination of the Bonds for the Installation/ Removal Work, (d) this Lease is terminated pursuant to the provisions hereof and Lessee has fulfilled its removal and restoration obligations under the Lease, or (e) any Permitted Institutional Mortgagee shall require that the Bonds for the Installation Work remain in effect for a longer period. Lessor acknowledges and agrees that, if any Permitted Institutional Mortgagee is at any time named as an obligee on the Bonds for the Installation Work, such Permitted Institutional Mortgagee shall be entitled to hold the original thereof and to exercise rights thereunder. In the event original Bonds for the Installation Work or original Bonds for the Removal Work are delivered to Lessor, upon termination of any such Bonds, the original shall be released to Lessee.

5.9 Safety. During the Installation Work and any other Lessor-approved improvements made by Lessee to the Premises, Lessee shall install such safety devices as may be necessary and appropriate and in accordance with any Land Use Approvals, and as Lessor may reasonably require, to ensure the safety of Lessor's personnel, persons on the Premises, the Remaining Property, adjacent property owners and their property, and the general public. Notwithstanding anything to the contrary in the Agreement, SPSA and this Lease, Lessor is not responsible for the security of the System, Premises or any improvements made thereto, which shall be at all times the sole responsibility of Lessee.

6. Representations and Warranties. Covenants of Lessor.

6.1 Authorization. Lessor represents and warrants that Lessor (i) has been duly authorized to enter into this Lease by all necessary action and (ii) will not be in default under any agreement to which it is a party with respect to the Premises by entering into this Lease or performing its obligations hereunder. As of the date hereof, the Lessor has not granted any fee mortgage encumbering its interest in the Property.

6.2 Lessor's Title to Premises. Lessor shall not sell, assign or otherwise alienate the Property or any portion thereof, unless Lessor shall have given Lessee at least thirty (30) days' prior written notice thereof, which notice shall identify the transferee, the portion of the Property to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the Premises and the Lessee's leasehold rights therein shall run with the Property being sold and survive any transfer of any of the Property. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, Lessee, assignee, mortgagee, pledgee or party to whom a lien has been granted by Lessor to execute and deliver to Lessee (i) a document pursuant to which such party acknowledges and consents to Lessee's rights in the Premises, and agrees to assume Lessor's obligations as set forth herein and in the SPSA, including, without limitation, an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of Lessor's transfer and (ii) with respect to any mortgage or pledge encumbering the Lessor's fee interest in any of the Property, the Subordination, Non-Disturbance and Attornment Agreement with Lessee contemplated in Section 6.3, each of which document and agreement shall run to and be for the benefit of any Permitted Institutional Mortgagee and its successors and assigns.

6.3 No Interference With System. Lessor will not knowingly conduct activities on, in or about the Premises or the Remaining Property, including activities required by Applicable Legal Requirements and Lessor's Existing Uses that will cause material damage to or otherwise materially and adversely affect the System or interfere with the generation of electricity. Lessee, upon Lessor's prior review and approval and at Lessee's sole expense, shall implement and maintain reasonable and appropriate security measures to prevent unauthorized parties from accessing the Premises or the System, and to prevent any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessor shall cause any third party who, with Lessor's assent, may in the future obtain an interest in the Property, including any successors or lenders to Lessor, to enter into a so-called "Subordination, Non-Disturbance and Attornment Agreement" with Lessee, to provide that each such lien or interest is subordinate to this Lease, does not and shall not encumber the System or other interests of Lessee in the Premises provided for in this Lease, with the effect that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of such mortgagee's lien: (a) Lessee shall not be named as a defendant therein unless required to be named by Applicable Legal Requirements; (b) Lessee's rights and interests under this Lease and ownership of the System shall not be affected or impaired thereby; (c) this Lease shall continue in effect during the Term; and (d) Lessee shall recognize any acquirer of title to the Premises by any such process as Lessor under this Lease so long as the transferee continues to hold fee simple title.

7. Representations and Warranties, Covenants of Lessee.

7.1 Authorization; Enforceability. The execution and delivery by Lessee of this Lease, and the performance of its obligations hereunder, have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Lessee or any valid order of any court, or regulatory agency or other body having authority to which Lessee is subject. This Lease constitutes a legal and valid obligation of Lessee, enforceable against Lessee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

7.2 School Security; and Ongoing School Activity.

(a) When the design has progressed to the point where Lessee can specify a construction schedule and construction staging plan, Lessee and Lessor shall reasonably jointly develop a construction plan regarding the ongoing use of sections of the parking lot by the school, the scheduling of construction so as to minimize any disruption of school use of the parking lot, and protocols regarding the conduct and behavior of Lessee and Lessor agents and subcontractors on the school property.

(b) The Lessor shall conduct checks of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Facilities Board, fingerprinting (CHRI/SAFIS), and the Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the Lessee or of a subcontractor or any person who will work on the System(s) on a School site. The Lessor may refuse to allow any such person to work on the Lease Area if the Lessor, in its sole discretion, determines that such employee or subcontractor is not suitable for work on the System(s) site based upon the results of such CORI, CHRI/SAFIS, or SORI. The Lessee and all of Lessee's employees, subcontractor employees, or other individuals who will work on the System(s) and Premises shall initiate a CORI, CHRI/SAFIS, and SORI search by completing forms and presenting identification at the location to be specified by the Lessor. The Lessor shall have the right to instruct Lessee, its employees, and its subcontractors to complete the CORI, CHRI/SAFIS, and SORI background check at any time for any reason or no reason even if individuals have already completed the background check. The costs associated with the background check including but not limited to fingerprinting shall be at the sole expense of the Lessee or of a subcontractor or any person who will work on the System(s) on a school Property. The Lessor shall keep such information in a confidential file.

7.3 Building Security; and Ongoing Municipal Activity. When the design has progressed to the point where Lessee can specify a construction schedule and construction staging plan, Lessee and Lessor shall reasonably jointly develop a construction plan regarding the ongoing use of any parking area and/or municipal building, the scheduling of construction so as to minimize any disruption of use of the parking lot or building, and protocols regarding the conduct and behavior of Lessee and Lessee's agents and subcontractors on the Lessor's Premises.

8. Maintenance.

8.1 Maintenance of Premises. Lessee (i) shall all at its sole cost and expense keep the System and Premises in first class and safe order and condition, comply with Lessee's Premises maintenance obligations, if any, and (ii) shall not commit, or permit its agents, employees, representatives or invitees to commit, waste to the Premises. If Lessee or its agents, employees, representatives or invitees (including sublessees) damage the Premises, the Property or any property of Lessor, Lessee shall, at its sole cost and expense (including any proceeds payable out of any insurance held by, or for the benefit of, Lessee), promptly notify the Lessor of such within 48 hours and, in accordance with Applicable Legal Requirements, repair and restore the Premises, the Property and any other property of Lessor and any property of other Lessees so damaged by Lessee or its agents, employees, representatives or invitees (including sublessees), or make payment to the Lessor to compensate for such damages. Lessee shall be responsible for the removal of all of its trash and waste and for removing snow and ice from the Premises (other than any parking lots upon which the Lessee has installed any canopies), as necessary for access and maintenance of the System and safety of the System for purposes of this Lease. Lessee shall further be responsible for removing snow as ordered by the Director of Municipal Inspections if required for structural concerns. In the event that the Lessee fails to

remove snow within the time ordered by the Director of Municipal Inspections, the Lessor will be entitled to perform such removal itself in which case the Lessee shall reimburse and indemnify the Lessor in connection with such snow removal and hereby waives and releases the Lessor from any claims arising from such. Lessee acknowledges that Lessor shall have no duty, obligation or liability to Lessee for the maintenance, repair and security of the Premises, except that Lessor shall, for its own benefit and not for the benefit of Lessee, be responsible for Lessor's Existing Uses, with which activities Lessee shall not interfere, and Lessor shall be solely responsible for such other obligations expressly imposed on Lessor pursuant to the terms of this Lease and/or the SPSA.

8.2 Maintenance of System. Lessee shall maintain and repair the System and related equipment so as to keep it safe, sanitary, and in first class working order and condition, reasonable wear and tear excepted, all at its sole cost and expense. Lessor shall have no duty or liability to Lessee with respect to the maintenance, repair or security of the System, except for such other obligations expressly imposed on Lessor pursuant to the terms of this Lease and/or the SPSA and any damage to the System caused by the Lessor or any of its employees, agents, invitees, or contractors in connection with the exercise of its rights of access to the Premises set forth herein.

8.3 Temporary Shutdown or Removal of System.

(a) Lessor Requested Shutdown. During the first six years, Lessor from time to time may require Lessee to temporarily stop operation of the System for a period no longer than thirty (30) days in total or until a predetermined date mutually agreed upon by both Lessor and Lessee, such stoppage to be reasonably related to Lessor's activities in maintaining and improving the Premises or the Property. During any such shutdown period (but not including any period on account of a Force Majeure Event), Lessor will pay Lessee an amount equal to the sum of (i) payments that Lessor would have made to Lessee under the SPSA for AOBCs attributable to electricity that would have been produced by the System during the period of the shutdown; (ii) documented revenues that Lessee would have received with respect to the System under the SMART Program with respect to electricity that would have been produced during the period of the shutdown; and (iii) documented revenues from Environmental Attributes and Solar Incentives that Lessee would have received with respect to electricity that would have been produced by the System during the period of the shutdown. Determination of the amount of electricity that would have been produced during the period of the shutdown shall be based, during the first year of Commercial Operation, on estimated levels of production as outlined in the SPSA and, after the first year of Commercial Operation, based on actual operation of the System during the same period in the previous year, unless Lessee and Lessor mutually agree to an alternative methodology.

(b) The Parties agree that after year six (6) of Commercial Operation (but not during years one (1) through six (6)), Lessor shall be afforded a total of fifteen (15) days which may be used consecutively, or in periods of at least twenty-four hours each ("Allowed Disruption Time"), during which the Lessor may require that the System be shut down if, and only if, Lessor is performing maintenance or repairs to the Premises or Property which require the System to be offline. Lessor shall not be obligated to make payments to Lessee for electricity not received

during the Allowed Disruption Time, nor shall Lessor be required to reimburse Lessee for any lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes and Solar Incentives. If Lessor requires more than a total of fifteen (15) days, then, Lessor will be obligated to reimburse Lessee for losses as described in Section 8.3 (a).

(c) Notwithstanding the foregoing, but subject to the occurrence of a Force Majeure Event, in no case will Lessor be allowed to use more than five (5) days of Allowed Disruption Time during the months of June, July, August or September. If Lessor requires that the System be offline for more than five (5) days during the months of June, July, August or September in any given year of Commercial Operation, then Lessor shall be required to make payment to Lessee as provided in paragraph (a), clauses (i), (ii) and (iii) above.

(d) In the event that the Premises requires repair or replacement, such that any portion of the System must be removed in order to enable such repair or replacement to be made, Lessee agrees that it shall remove the System or any part thereof to allow Lessor to make such repairs (the cost of such repairs being referred to herein as the "Repair Expense"). Lessor shall bear the cost of the Repair Expense with respect to any repairs required by the Lessor's activities, and shall pay Lessee the amounts specified in paragraph (a), clauses (i), (ii) and (iii) above for the period that the System cannot be operated on the Premises.

(e) If (i) Lessee's activities and/or omissions made such shutdown or removal necessary and (ii) Lessor provides written notice to Lessee that specifies such Lessee activities that made such shutdown or removal necessary promptly upon becoming aware of such activities and of the consequences thereof, then (A) Lessee shall be given a commercially reasonable opportunity, subject to the approval of the Lessor, to perform the required maintenance or repairs, at its own cost and expense, following receipt of such Lessor notice and, (B) if Lessee does not commence within a commercially reasonable time (not to exceed thirty (30) days) and thereafter diligently perform such maintenance or repairs or if Lessor does not approve of Lessee making such repairs, Lessor may cause such work to be done, and Lessee shall be responsible for and shall promptly pay to Lessor the Repair Expense and the cost of the removal, storage and re-installation of the System. Lessor shall use commercially reasonable efforts to complete any such maintenance or repairs required in this Section 8.3 within thirty (30) calendar days following the disabling of the System or part thereof. Lessor and Lessee shall cooperate and, subject to Applicable Law, use commercially reasonable efforts to ensure that any repair does not materially increase the cost of operating and maintaining the System. Except where the maintenance or repairs were made necessary by Lessee activities, Lessee's required production under the Performance Guarantee provisions of the SPSA shall be prorated for the time that the System, or any portion thereof, is offline for such repair.

8.4 Lessor's Cure Rights. In addition to any rights afforded Lessor under the SPSA, if repairs are required to be made by Lessee pursuant to the terms hereof, Lessor may demand that Lessee make the same, and, if Lessee refuses or neglects to commence and diligently pursue the completion of such repairs within thirty (30) days after such demand, or forthwith in the case of emergency repairs, Lessor may (but shall under no circumstances be required or obligated to) make or cause such repairs to the Premises and Lessor shall not be responsible to Lessee for any loss or damage that may accrue to Lessee's property by reason thereof, except for damage caused by Lessor's gross negligence and/or willful misconduct. If Lessor makes or causes such repairs to be made, Lessee agrees that Lessee shall forthwith, on demand, pay to Lessor the costs thereof, failing which, Lessor shall have the remedies provided herein as it does for the failure to pay Rent, and/or may, notwithstanding anything to the contrary in the SPSA, deduct the cost of such repairs from amounts otherwise due Lessee under the SPSA.

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10. Hazardous Materials.

10.1. Hazardous Materials. "Hazardous Materials" are any hazardous, toxic or radioactive materials, substances or waste, as defined in federal or state law, including petroleum products, regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to Massachusetts General Laws, chapter 21E; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §1801, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. §11001, et seq.; and any rules, regulations or orders promulgated pursuant thereto (collectively, the "Environmental Laws").

10.2. Lessee Hazardous Activities. Lessee agrees that during the Term it shall not, nor allow others under its control (including sublessees and licensees) to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Property, or cause the release of any Hazardous Material, in violation of any of the Environmental Laws or Lessee's obligations under this Lease. Lessor agrees that during the Term it shall not, nor allow others under its control (exclusive of Lessee and Lessee's sublessees and licensees) to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Property, or cause a release from the Premises of any Hazardous Material, in violation of any of the Environmental Laws.

10.3. Lessee Environmental Indemnity. In addition to any other rights and remedies available to Lessor, Lessee agrees to defend, hold harmless and indemnify Lessor from and to assume all and any claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs and expenses (including without limitation reasonable attorneys' fees) (collectively, "Lessor Claims") arising from any of the following acts

occurring during the Term (i) the failure by Lessee or its agents, employees, contractors, subcontractors, licensees or invitees (collectively, with Lessee, referred to as the "Lessee Parties") to comply with any applicable Environmental Laws, and (ii) any Hazardous Materials on or about the Premises which are in any way caused by or related to the acts or omission of any of the Lessee Parties.

10.4. Survival. The provisions of this Section 10 will survive the expiration or termination of this Lease.

11. Indemnification; Release.

11.1 Lessee Indemnity. In addition to Lessee's indemnification obligations under Section 10 of the Lease and under the SPSA and any other rights and remedies available to Lessor, Lessee shall indemnify, hold harmless, release and defend Lessor from and against all Lessor Claims: (a) arising directly or indirectly from the failure of any of the Lessee Parties to comply with the terms of this Lease, the SPSA and/or Applicable Legal Requirements; (b) caused by or arising, directly or indirectly, from the act, omission, or negligence on the part of any of the Lessee Parties; (c) relating to any work done or action taken during the Term of this Lease and the Term of the SPSA in, on or about the Premises or any part thereof, including, but not limited to, the Installation Work and any other improvement on the Premises, by any of the Lessee Parties; and (d) relating to the use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof as required pursuant to this Lease during the Term by any of the Lessee Parties (provided that the foregoing provisions of the immediately preceding sub-clauses (c) and/or (d) cease to be operative or in effect following the end of the Term or any direct or indirect acquisition of Lessee's interest in the Premises by Lessor).

11.2 Release. To the maximum extent permissible by law, Lessee agrees to use and occupy the Premises at Lessee's own risk, and Lessor shall have no responsibility or liability for any loss or damage arising during the Term to the System or other personal property of Lessee unless caused directly and solely by the negligence or willful misconduct of Lessor or its agents, employees, contractors, subcontractors, licensees or invitees (collectively, the "Lessor Parties").

11.3 Limitation on Liability. Except as specifically set forth in this Lease or the SPSA, Lessor shall in no event be liable for any indirect, consequential, incidental, punitive or special damages, loss of profit or the like, whether or not such damages are deemed foreseeable, and Lessee hereby waives any claims that Lessee or the other Lessee Parties may have against Lessor with respect to such damages unless caused by Lessor or Lessor Parties.

11.4 No Personal Liability. To the fullest extent permitted by law, no official, employee, agent or representative of Lessor shall be individually or personally liable for any obligation or liability of Lessor under this Lease.

11.5 Survival. The provisions of this Section shall survive the termination or expiration of this Lease.

12. Insurance.

12.1 Commencing on the Effective Date except as hereinafter specified and continuing thereafter during the Term, Lessee shall procure and maintain at its sole cost and expense, and provide evidence to Lessor of, the following insurance:

- i. Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applies per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability
- ii. Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.
- iii. Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.
- iv. Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 bodily injury per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.
- v. Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit.

12.2 General Requirements. The following conditions shall apply to the insurance policies required herein:

- a. Lessee agrees that the Commercial General Liability insurance set forth above shall be primary and non-contributing with respect to any insurance carried by Lessor or Lessee's subcontractor(s).
- b. Lessee's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance.

- c. Lessee's insurance shall name the City of Beverly as additional insured as their interests may appear with coverage at least as broad as the coverage provided to the named insured.
 - d. The insurance set forth above shall be written on an occurrence basis, unless the Lessor approves in writing, coverage on a claims-made basis.
 - e. Certificates of Insurance reasonably acceptable to the Lessor that include insurance coverages required and specified above shall be delivered to the Lessor promptly after execution of the Lease. Each policy shall contain all generally applicable conditions, definition, exclusions and endorsements related to the System.
 - f. The certificates and the insurance policies required will contain a provision that coverages afforded under the policies will not be canceled, modified or allowed to expire until at least 30 days' prior written notice has been given to the Lessor. The Lessor will accept a 10-day notice for cancellation for non-payment of premium as required by insurance company. In the event that any insurance policy providing coverage required by the Lease is canceled or will expire during the term of the Lease, the Lessee will, not less than 15 days prior to the policy's expiration date, deliver to the Lessor new certificates of insurance evidencing replacement / renewal of such policies.
 - g. The failure to provide and continue in force any insurance required in accordance with the terms of the Lease shall constitute a material breach of the Lease.
 - h. The Lessee shall provide Builder's Risk Insurance. Such coverage shall include all building additions and materials used for the Work while at the Premises or on route to the Premises. The amount of Builder's Risk coverage shall equal the total cost of the System.
 - i. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to do business in Massachusetts and having a rating no lower than A- (excellent) from A.M. Best's Key Rating Guide (latest edition in effect at the date of the Lease and at the time of renewal of any policies required by the Lease) unless otherwise approved by Lessor.
- (a) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.
- (b) Lessee's obligation to hold harmless and indemnify Lessor shall not be limited by the requirement for, or existence of, insurance coverage.
- (c) Lessor shall have the right to require Lessee to increase such limits when, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises, in the same geographic region and for the same Permitted Uses, by responsible owners or Lessees are generally increased, it being the intention of this sentence to require Lessee to take account for inflation in

establishing minimum limits of liability insurance as maintained from time to time on the Premises.

12.3 Lessor's Cure Rights Relating to Insurance. In the event of Lessee's failure, in whole or in part, at any time during the Term of this Lease or thereafter while the Lessee continues to occupy the Premises or any of the System remains on the Premises, to obtain insurance required to be carried by Lessee under the provisions hereof or to provide such evidence thereof in timely fashion, subject to providing Lessee prior written notice of such failure, as set forth in 13.1 of this Lease, Lessor shall have the right (but shall not be obligated) to procure such insurance and Lessee shall pay to Lessor the costs and expenses thereof as Additional Rent, or Lessor may, in its discretion, deduct such costs and expenses from amounts otherwise due from Lessor to Lessee under the SPSA.

12.4 Insurance Proceeds for Damage to Property. In the event any damage to the Property, including the Premises, is covered by insurance, all insurance proceeds payable on account of such damage that are received by, or within the control of, Lessee, shall be forthwith paid to Lessee in accordance with Section 15.

13. Default.

13.1 Event of Default by Lessee.

It shall be an Event of Default if:

(a) Lessee fails to pay Rent or comply with any provision curable by the payment of money, including, without limitation, Lessee's obligation to maintain the insurance required under this Lease, when due hereunder and such failure continues for fifteen (15) days after written notice from Lessor that the same is due;

(b) Lessee fails to perform or observe any other term or condition contained in this Lease and such failure is not cured within thirty (30) days after written notice from Lessor, provided, however, that if such failure is of such a nature that Lessee cannot reasonably remedy the same within such thirty (30) day period, no such failure will be deemed to exist if Lessee promptly commences to cure the default within such thirty (30) day period and prosecutes the same to completion with reasonable diligence (but in no event later than one hundred twenty (120) days from the date of the notice from Lessor unless otherwise agreed upon in writing); or

(c) Lessee shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Lessee's property for the benefit of creditors, or a receiver or trustee is appointed to take over and conduct the business of Lessee, whether in receivership, reorganization, bankruptcy or other action or proceeding, and such bankruptcy or insolvency proceeding, receivership or trusteeship shall not have been vacated not later than ninety (90) days after such declaration, election or appointment, unless (i) such debtor in possession, receiver or trustee shall have within said ninety (90) days remedied all defaults under this Lease; and (ii) such debtor in possession, receiver or trustee shall have within said ninety (90) days

executed an agreement, duly approved by Lessor, whereby such debtor in possession, receiver or trustee shall assume and agree to be bound by each and every term, provision and limitation of this Lease, and if in bankruptcy Lessee, for itself, for the debtor in possession, the receiver or trustee does, hereby waives its ability to request an extension of the period to assume or reject this Lease in excess of ninety (90) days from the Court's Order for Relief.

13.2 Event of Default Remedies for Lessor.

Upon an Event of Default remaining beyond applicable notice and cure periods, Lessor at any time thereafter may give written notice to Lessee specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least forty-five (45) days after the giving of such notice, subject to the rights for cure if and only if such rights apply to the Event of Default in question. Unless the Event of Default is one for which a cure may be made, and a cure has been made or commenced in accordance with Section 13.1, upon the date specified in such notice, this Lease, the SPSA and the Term hereby demised and all rights of Lessee under this Lease and the SPSA shall expire and terminate, and Lessee shall remain liable as hereinafter provided prior to the default.

At any time or from time to time after any such expiration or termination of a cure period provided above and so long as any applicable Event of Default remains in effect, and notwithstanding anything to the contrary in this Lease, Lessor shall have the right, but not the obligation, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended, and/or remove the System and Lessee's other effects on the Premises at Lessee's cost, without prejudice to any remedies which might otherwise be available to Lessor, but only after Lessee and any Permitted Institutional Mortgagee has had the opportunity to remove the System in accordance with the De-commissioning and Removal Plan and as set forth in Section 16 below.

Upon an Event of Default and so long as any applicable Event of Default remains in effect: (a) Lessor shall be entitled to exercise any and all rights and remedies available under this Lease and the SPSA, and Lessor may, but shall not be obligated to, take any and all actions to cure Lessee's default, all at Lessee's cost and expense; and (b) Lessor may enter upon the Premises (after ten (10) days' written notice to Lessee except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary, but shall not make any repairs to the System.

Without limiting any of Lessor's rights and remedies hereunder, and in addition to all other amounts Lessee is otherwise obligated to pay, it is expressly agreed that Lessor shall be entitled to recover from Lessee all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in enforcing this Lease from and after the occurrence of any Event of Default of Lessee and so long as any applicable Event of Default remains in effect.

The provisions of this Section 13.2 shall survive the expiration or earlier termination of this Lease.

13.3 Event of Default by Lessor. It shall be an event of default under this Lease if Lessor fails to perform any material term or condition under this Lease within thirty (30) days after receipt of written notice from Lessee specifying the failure, provided, however, that no such failure will be deemed to exist if Lessor commences to cure the default within such thirty (30) day period and thereafter prosecutes the same to completion with reasonable diligence (but in no event later than one hundred twenty (120) days from the date of the notice from Lessee unless otherwise agreed upon in writing). It shall also be an Event of Default if Lessor declares bankruptcy. If an Event of Default by the Lessor occurs hereunder and continues beyond any applicable cure period, Lessee shall have the right to terminate this Lease and/or to pursue any and all remedies available to it under this Lease and applicable law. The Lessee will use its best efforts to mitigate any damages.

13.4 If there is a Lessor Default, Lessee shall have the right to maintain the System at the Premises for the remainder of the Initial Term or Remainder Term, as applicable, subject to the terms, limitations, and conditions with respect to such continued maintenance as set forth in Section 11.2(b) of the SPSA.

14. Leasehold Mortgages

14.1 Leasehold Mortgages. Lessee shall have the right, from time to time, without the prior consent of Lessor, to mortgage, hypothecate, pledge, or otherwise encumber Lessee's leasehold estate in the Premises and its interest in the System as security for payment of any indebtedness and/or the performance of any obligation by means of one or more mortgages, assignments of leasehold interest, security or pledge agreements, or any other security instruments in favor of an institutional lender or lenders (referred to herein as a "Permitted Institutional Mortgage" with the holder of such mortgage, assignment, security or pledge agreement, or other security instrument and its successors and assigns referred to herein as a "Permitted Institutional Mortgagee"). For greater certainty, an "institutional lender" shall be deemed to include any real estate investment trust, bank, saving and loan association, credit union, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, federal or state chartered depository institution, or tax credit investor. Each Permitted Institutional Mortgage shall mature no later than the last day of the then current Term, and may be secured by a leasehold mortgage, expressly subject to the terms and conditions of this Lease. It is expressly understood and agreed that Lessee has no right to mortgage or otherwise encumber the fee title to the Property or the Lessor's interest in the Premises, except that Lessee may encumber the fee title to the System and its leasehold interest in the Premises pursuant to a Permitted Institutional Mortgage as if it were part of Lessee's leasehold estate. Upon the closing of any financing with a Permitted Institutional Mortgagee, Lessee shall promptly deliver to Lessor a true copy of the Permitted Institutional Mortgage, any assignments relating thereto and the contact information for the Permitted Institutional Mortgagee ("Financing Notice"). Upon Lessor's receipt of a Financing Notice, the Permitted Institutional Mortgagee identified in such Financing Notice shall be entitled to the protections and benefits provided under this Section 14; Lessor shall notify a Permitted Institutional Mortgagee of any Lessee Default under this Lease or the SPSA at the time of giving

such notice to the Lessee; and such Permitted Institutional Mortgagee shall have the right, but not the obligation, to cure such Default within the same time specified in Section 13; provided, however, if a Permitted Institutional Mortgagee commences a cure of such default within the time period specified in Section 13, the Lessor shall afford such Permitted Institutional Mortgagee an additional thirty (30) days beyond the time period specified in Section 13 to effectuate such cure. The Lessor shall accept any cure of a default by the Lessee tendered by a Permitted Institutional Mortgagee as if such cure were being tendered by the Lessee.

14.2 Permitted Institutional Mortgages not Assignment. Upon the occurrence of any event of default under a Permitted Institutional Mortgage or the credit, loan, or equity documents executed in connection therewith, the Permitted Institutional Mortgagee shall be entitled to (a) conduct a foreclosure sale of the Lessee's leasehold interest in the Premises, (b) take possession of or make entry upon the Lessee's leasehold interest in the Premises, whether in its name or in the name of any nominee, subsidiary, or affiliate of such Permitted Institutional Mortgagee, and/or (c) take title to the Lessee's leasehold interest in the Premises by deed in lieu of foreclosure or any other manner, whether in its name or in the name of any nominee, subsidiary, or affiliate of the Permitted Institutional Mortgagee. If a Permitted Institutional Mortgagee conducts a foreclosure sale of the Lessee's leasehold interest in the Premises or conveys the Lessee's leasehold interest in the Premises by deed in lieu of foreclosure or any other manner of transfer or assignment, (i) the Permitted Institutional Mortgagee or its nominee, subsidiary, or affiliate may acquire title to the Lessee's leasehold interest in the Premises or (ii) the Permitted Institutional Mortgagee may transfer the leasehold interest hereunder to any other person or entity that has experience, qualifications and financial ability to perform the obligations of Lessee under this Agreement and the SPSA at least equal to those Lessee had on the Commencement Date, subject to ten (10) days' prior notice to Lessor. Likewise, if the interests of the Lessee under the Lease shall be transferred to and owned by a Permitted Institutional Mortgagee (or any nominee, subsidiary, or affiliate thereof) by reason of foreclosure or other proceedings brought by such Permitted Institutional Mortgagee, deed in lieu of foreclosure, or by any other manner of transfer or assignment, or if the Permitted Institutional Mortgagee takes possession of or makes entry upon the Lessee's leasehold interest in the Premises, the Permitted Institutional Mortgagee (or its nominee, subsidiary, or affiliate, as applicable) may re-assign the leasehold interest under this Lease to any other person or entity that has experience, qualifications and financial ability to perform the obligations of Lessee under this Agreement and the SPSA at least equal to those Lessee had on the Commencement Date, but subject to ten (10) days' prior notice to Lessor. The Lessor shall recognize, as "Lessee" under the Lease, any person or entity to whom the Permitted Institutional Mortgagee transfers the Lessee's leasehold interest in the Premises pursuant to this Section 14.2 (including, without limitation, in connection with any re-assignment of such interest by the Permitted Institutional Mortgagee or any nominee, subsidiary, or affiliate of such Permitted Institutional Mortgagee).

The making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of Lessee's interest in this Lease or the SPSA, and any Permitted Institutional Mortgagee, as such, shall not be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee to

assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder or under the SPSA unless and until such Permitted Institutional Mortgagee has either (a) exercised its powers under and subject to any proceedings for the foreclosure of any Permitted Institutional Mortgage and acquired such leasehold in connection with such foreclosure proceedings, or (b) becomes the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, whereupon such Permitted Institutional Mortgagee or any transferee which has acquired the Lessee's leasehold rights as a result of the Permitted Institutional Mortgagee's exercise of any of the foregoing rights shall be deemed to be an assignee or transferee and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Lessee to be performed hereunder and under the SPSA from and after the date of such purchase and assignment, and such transferee or assignee shall immediately execute a written instrument assuming Lessee's obligations hereunder and under the SPSA. Absent agreement of the Parties in writing, Lessee shall not be relieved of its obligations under the Lease, notwithstanding the making of a Permitted Institutional Mortgage or any subsequent assignment or transfer to a Permitted Institutional Mortgagee. In connection with Lessee entering into any Permitted Institutional Mortgage, if the Lessor has granted a mortgage upon its fee interest in the Property or any part thereof, Lessor agrees to enter into and cause such fee mortgagee to enter into any Subordination, Nondisturbance and Attornment Agreement or similar instrument (the "Subordination, Nondisturbance and Attornment Agreement"), in recordable form, reasonably required by the applicable Permitted Institutional Mortgagee, to the extent the Subordination, Nondisturbance and Attornment Agreement contains customary provisions which are otherwise reasonably satisfactory to Lessor and Lessor's fee mortgagee, if applicable.

14.3 Permitted Institutional Mortgagee's Rights in and to System. For the benefit of each Permitted Institutional Mortgagee for which the Lessor has received a Financing Notice, the Lessor hereby acknowledges, consents, and agrees as follows:

(a) The Lessee is the sole owner and operator of the System, which is and shall remain the personal property of the Lessee and its successors and assigns.

(b) The System shall not be deemed to be fixtures or otherwise any constituent of real property, notwithstanding the manner in which the System is or may be affixed or attached to the Property.

(c) The Lessor shall take no action that will impair or impede the exercise by a Permitted Institutional Mortgagee of any right or remedy of such Permitted Institutional Mortgagee pertaining to the System and/or arising under the Permitted Institutional Mortgage, applicable law, or otherwise.

(d) During the Term, pursuant to, and in the exercise of, its rights and remedies as a secured party under the Permitted Institutional Mortgage and under the Uniform Commercial Code, a Permitted Institutional Mortgagee and its representatives, agents, or invitees may, at the Permitted Institutional Mortgagee's option and with prior notice to Lessor and compliance with

Lessor's reasonable requirements therefor, enter upon the Property to inspect and/or remove any or all of the System. Also, in the event of termination of the Lease for any reason whatsoever, the Parties hereto will permit a Permitted Institutional Mortgagee and its representatives, agents, or invitees to access the Property during a period of ninety (90) days after such termination for the purposes of inspection, repossession, removal, and/or otherwise dealing with all or any part of the System. If any injunction or stay is issued that prohibits the Permitted Institutional Mortgagee from exercising its rights to occupy and remain on the Property, the commencement of the foregoing 90-day period will be deferred until such injunction or stay is lifted or removed.

(e) The Lessor shall permit insurance, eminent domain, condemnation and similar proceeds and/or awards relating to the System and the Premises to be applied and/or used as required or permitted by the provisions of the Permitted Institutional Mortgage and the other documents executed in connection therewith.

14.4 New Lease. If the Lease is terminated as a result of an Event of Default by the Lessee hereunder, other than an Event of Default which could have been but was not cured by a Permitted Institutional Mortgagee (including, without limitation, any bankruptcy, insolvency or other similar proceeding affecting Lessee (each of which Events of Default is not curable by a Permitted Institutional Mortgagee)), the Lessor will, at the option of the Permitted Institutional Mortgagee, and subject to Lessor's confirmation of experience, qualifications and financial ability to perform the obligations of Lessee under this Agreement and the SPSA at least equal to those Lessee had on the Commencement Date, enter into a new lease with the Permitted Institutional Mortgagee or its nominee, subsidiary, or affiliate on the same terms and conditions as currently set forth in the Lease, including, without limitation, the rental rate and extension options set forth therein, except that the Term of the new lease shall only be for the then-remaining Term under the original Lease.

14.5 Estoppel. Upon reasonable written request of any Permitted Institutional Mortgagee and at its cost, the Lessor agrees, within ten (10) days of such request, to execute an estoppel certificate in favor of such Permitted Institutional Mortgagee pursuant to which the Lessor certifies as to the following: (a) that the Lessor is the fee owner of the Property, (b) whether this Lease has been amended or modified and is in full force and effect, (c) the Term Commencement Date, the Commercial Operation Date, and the expiration date of the Lease, (d) whether the Lessee is in default under this Lease and describing with reasonable specificity any events giving rise to such a default, (e) whether the Lessee is current in the payment of all Rent and other charges due under the Lease, (f) whether there are any disputes or adversarial proceedings under the Lease between the Lessor and the Lessee, (g) whether the Lessor has granted any lien, mortgage, or encumbrance upon its fee simple interest in the Property, and (h) such other provisions as may be reasonably requested by such Permitted Institutional Mortgagee.

14.6 SNDAs. Any Subordination, Nondisturbance and Attornment Agreement for which the Lessee is entitled to approve, review, and/or consent to under Section 6.3 of this Lease shall also require the approval, review, and/or consent of each Permitted Institutional Mortgagee which has provided a Financing Notice to the Lessor.

14.7 Amendments to Lease. With respect to each Permitted Institutional Mortgagee that has provided a Financing Notice to the Lessor, until such time as the obligations of the Lessee to such Permitted Institutional Mortgagee are indefeasibly paid in full and the lending commitments of such Permitted Institutional Mortgagee to the Lessee have been terminated, the Lessor shall not modify or amend the Lease without the prior written consent of such Permitted Institutional Mortgagee, which consent shall not be unreasonably withheld.

15. Other Casualty; Condemnation

15.1 Casualty. If, at any time during the Term, the System is damaged or destroyed or rendered inoperable by fire or other casualty, Lessee shall repair, replace or remove the System in accordance with this Lease and the SPSA.

15.2. Condemnation. In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will provide reasonably prompt notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient to render the Premises demonstrably unsuitable for Lessee's Permitted Uses, this Lease shall terminate as of the date the title vests in the condemning authority. If the condemnation involves the taking of all or substantially all of the Premises and the System, Lessor and Lessee will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Premises and the Property constituting the Lease Area, which are the subject of any such taking.

16. Surrender.

Within ninety (90) days from the expiration or termination of this Lease, Lessee shall remove the System and all other improvements installed by Lessee on the Premises in compliance with Applicable Legal Requirements, the De-commissioning and Removal Plan and restore the Premises to its original condition as of the Commencement Date reasonable wear and tear excepted. In connection with such removal, Lessor shall continue to provide Lessee with access to the Premises without payment of further Rent or consideration during said 90-day period. Any improvements not removed from the Premises after the expiration of the foregoing 90-day period shall be deemed abandoned and shall become the sole property of Lessor, subject to any liens granted to a Permitted Institutional Mortgagee. In such case, Lessor shall have the right to use the Bonds for the Removal Work as provided for herein and/or in the SPSA to pay for the removal of the System, any costs associated with repairing any damage caused to the Premises for the removal of the System and/or to make such repairs or improvements to the Premises to restore the Premises to its original condition, reasonable wear and tear excepted. The provisions of this Section shall survive expiration or earlier termination of this Lease.

17. Assignment; Sublet.

Lessee may assign this Lease to the same extent as it may assign the SPSA, as provided in the SPSA, provided the assignee is also the transferee under the SPSA. Otherwise, Lessee

shall not assign this Lease or sublet the Premises or any portion thereof under any circumstances absent the advance written approval of Lessor, which may be withheld in Lessor's sole discretion and any assignment or sublet without such advance written approval is null and void. The granting of a Permitted Institutional Mortgage shall not be deemed an assignment of this Lease.

18. Miscellaneous.

18.1 Lessor's Access. In addition to such other rights of access stated in this Lease, Lessor or Lessor Parties may, at reasonable times and upon reasonable prior notice, except in case of emergency when no such notice shall be necessary, enter the Premises to ensure compliance with the terms of this Lease, to take necessary actions to protect the property or persons on the Property, including the Premises, to enforce the terms of this Lease which are applicable during the Term, to perform any work or activities that are required of Lessor, or for any other purpose, in each case, without unreasonable interference with the Lessee's leasehold rights and the operation of the System.

18.2 Quiet Enjoyment.

(a) Lessor covenants that so long as no Event of Default has occurred and is continuing, but subject at all times to Applicable Legal Requirements and Lessor's Existing Uses on and about the Premises as of the Commencement Date, Lessee shall quietly have and enjoy the Lease Area during the Term. Lessor's exercise of the rights of access in accordance with the terms of this Lease or Applicable Legal Requirements shall not be deemed a breach of the covenant of quiet enjoyment.

(b) Lessee shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Lessor's Existing Uses or the Remaining Property or the rights of any other occupants in and to such areas or for Lessor's Existing Uses. In the event interference occurs, Lessee agrees to take all reasonable steps necessary and appropriate to eliminate such interference promptly, but no later than thirty (30) days from written notification by Lessor. Lessor may construct, reconstruct, modify or make alterations to the Property, the Cable Area, and the Remaining Property so long as such activities do not materially and adversely interfere with the operation of the System, provided, however, that Lessor may do all such things as may be required by Applicable Legal Requirements notwithstanding anything to the contrary in this Lease and the SPSA.

18.3 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Lease shall be deemed to be an agreement by Lessor to issue or cause the issuance of any Land Use Approvals, or to limit or otherwise affect the ability of Lessor or any regulatory authority of Lessor to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements, except as specifically set forth herein.

18.4 Subordination to Existing Leases, Easements and Rights of Way. Lessee acknowledges and understands that this Lease and all rights of Lessee hereunder are subject and

subordinate to all existing easements, rights of way, declarations, restrictions or other matters of record, except for Lessor fee mortgage holders, which shall be subject to an SNDA as set forth in Section 6.3. Lessor reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary on the Remaining Land, which do not materially and adversely interfere with Lessee's Permitted Uses and after receipt of Lessee's prior written consent, provided, however, that Lessor may do all such things as may be required by Applicable Legal Requirements, but Lessor shall not interfere with the System's direct access to sunlight.

18.5 Amendments. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

18.6 Notices. Any notice required or permitted to be given in writing under this Lease shall be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

If to Lessor: City of Beverly
 Office of the Mayor
 191 Cabot Street
 Beverly, Massachusetts 01915
 With copy to City Solicitor

If to Lessee: Kearsarge Beverly LLC
 1380 Soldiers Field Rd, Suite 3900
 Boston, MA 02135
 Attn: Andrew Bernstein

18.7 Waiver. Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by either Party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any

other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

18.8 Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

18.9 No Third Party Beneficiaries. This Lease is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third Party not a Party hereto, except that the provisions of Section 14 shall be for the benefit of each Permitted Institutional Mortgagee for which the Lessor has received a Financing Notice.

18.10 Lessor's Costs. Lessee shall reimburse Lessor for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Lessee for Lessor's consent hereunder.

18.11 Captions. The captions and headings throughout this Lease are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Lease, nor in any way affect this Lease, and shall have no legal effect.

18.12 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.13 Choice of Law and Venue. This Lease shall be construed in accordance with the laws of the Commonwealth of Massachusetts notwithstanding any laws regarding conflicts of laws, and any claims or dispute relating to this Lease shall be brought in courts within the Commonwealth of Massachusetts, and the Parties hereby assent to the jurisdiction of such courts. The Parties agree that any court action shall be filed in Essex County Superior Court.

18.14 Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

18.15 Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same

effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court proceedings between the Parties.

18.16 Entire Agreement. This Lease, the SPSA, and payment in lieu of taxes agreement and any Land Use Approvals represent the full and complete agreements between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

18.17 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold its compliance with any reasonable request made pursuant to this Section, provided, however, that a Party shall not be required to execute any additional document, instrument or assurance that it reasonably believes will increase its risk or obligations under the Lease.

18.18 Notice of Lease. Lessor and Lessee mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form, both for recording with the applicable Registry of Deeds

18.19 Miscellaneous.

A. NON-DISCRIMINATION.

The Lessee will carry out the obligations of this Lease in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Lessee shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. The previous sentence shall include, but not be limited to, the following: advertising, recruitment; hiring; rates of pay or other forms of compensation; terms; conditions or privileges of employment; employment upgrading; transfer; demotion; layoff; and termination. The Lessee shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap.

B. USE OF ALCOHOL AND CONTROLLED SUBSTANCES PROHIBITED/NO SMOKING

The Lessee hereby acknowledges that the use of alcoholic beverages, narcotics, and mood altering substances, except for current valid, legal prescriptions, by any officer, employee, agent, or representative of the Lessee is prohibited on Lessor's property and during all hours of work under this Lease. If any officer, employee, agent, or representative of the Lessee violates the foregoing provision, the Lessor shall have the right to order that such officer, employee, agent, or representative of the Lessee shall not be permitted to return to work on this Lease. Under such circumstances, upon the Lessee's obtaining notice of such person's violation of this Section, the Lessee shall promptly remove the subject officer, employee, agent, or representative from the job site and shall not permit the subject officer, employee, agent, or representative to perform further work in conjunction with this Lease. Pursuant to Massachusetts General Laws c. 270, §22, the Commonwealth of Massachusetts Smoke free Workplace Law, the Lessee, its officers, employees, agents, and representatives shall refrain from smoking and from using tobacco products in any public building of the Lessor.

C. LIABILITY OF PUBLIC OFFICIALS:

To the full extent permitted by law, no official, employee, agent, commissioner, or representative of the City of Beverly shall be individually or personally liable on any obligation of the Lessor under this Lease.

D. CONFLICT OF INTEREST:

The Parties acknowledge the provisions of the State Conflict of Interest Law, M.G.L. c. 268A, and this Lease expressly prohibits any activity which shall constitute a violation of that law. The Lessee shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Lease; and by executing the Lease, the Lessee certifies to the Lessor that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

19.20 Sovereign Immunity. Notwithstanding any other provision in this Lease, the Lessor's liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

LESSOR:

CITY OF BEVERLY

LESSEE:

KEARSARGE BEVERLY LLC

By: Kearsarge Solar LLC, its manager

By: _____
Name: Andrew J. Bernstein
Title: Manager

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY – 90 COLON STREET

The Lessor's property located at 90 Colon Street, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on April 23, 1991, at Book 10766, Page 595, and identified as Lot 343 of the City of Beverly Assessor's Map 31.

EXHIBIT A-2

LEGAL DESCRIPTION OF PROPERTY – 191 CABOT STREET

The Lessor's property located at 191 Cabot Street, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on June 3, 1841, at Book 325, Pages 192 and 193, and identified as Lot 513 of the City of Beverly Assessor's Map 11.

EXHIBIT A-3

LEGAL DESCRIPTION OF PROPERTY – 10 POND STREET

The Lessor's property located at 10 Pond Street, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on April 22, 1955, at Book 4157, Page 360, and identified as Lot 306 of the City of Beverly Assessor's Map 11.

EXHIBIT A-4

LEGAL DESCRIPTION OF PROPERTY – 11 POND STREET

The Lessor's property located at 11 Pond Street, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on September 20, 1971, at Book 5804, Page 196, and identified as Lot 334 of the City of Beverly Assessor's Map 11.

EXHIBIT A-5**LEGAL DESCRIPTION OF PROPERTY – 502 CABOT STREET**

The Lessor's property located at 502 Cabot Street, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on January 3, 1952, at Book 3868, Page 365, and identified as Lot 21 of the City of Beverly Assessor's Map 42.

EXHIBIT A-6

LEGAL DESCRIPTION OF PROPERTY – 100 SOHIER ROAD

The Lessor's property located at 100 Sohier Road, Beverly, Massachusetts, more accurately described in a deed recorded with the Southern Essex District Registry of Deeds on July 20, 1961, at Book 4794, Page 297, and identified as Lot 144 of the City of Beverly Assessor's Map 42.

EXHIBIT B-1

DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA – 90 COLON STREET



EXHIBIT B-2

DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA - 191 CABOT STREET

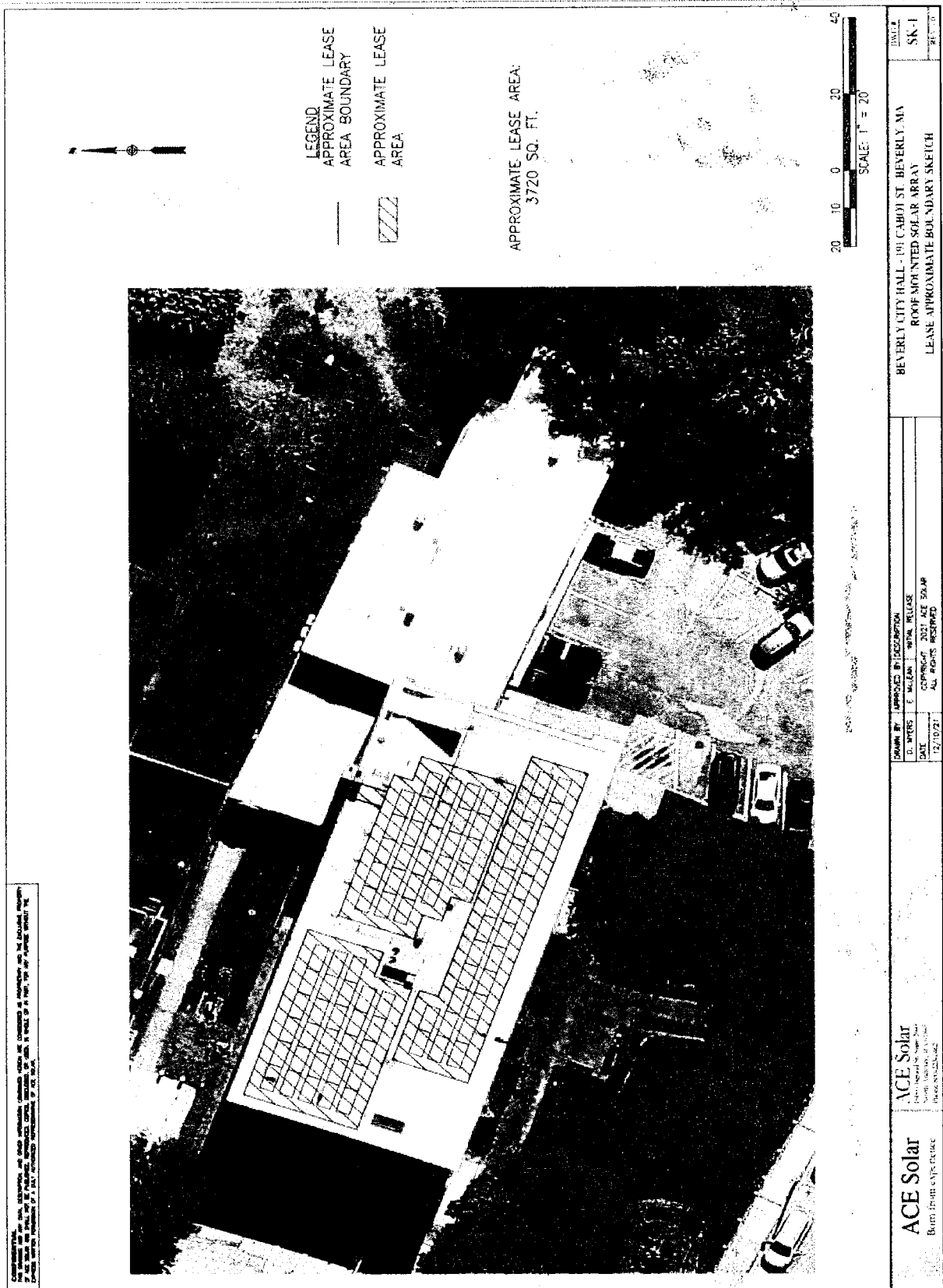
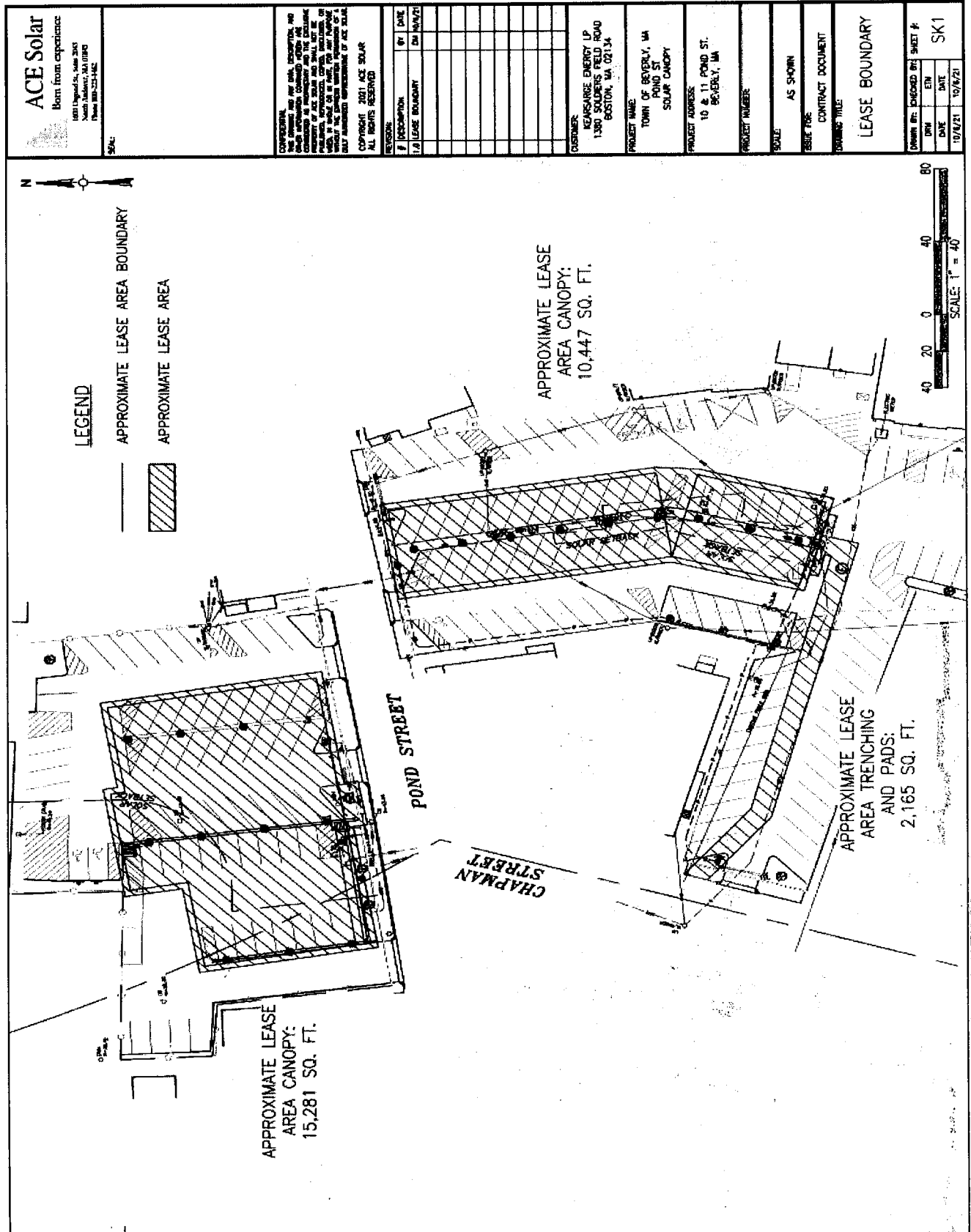
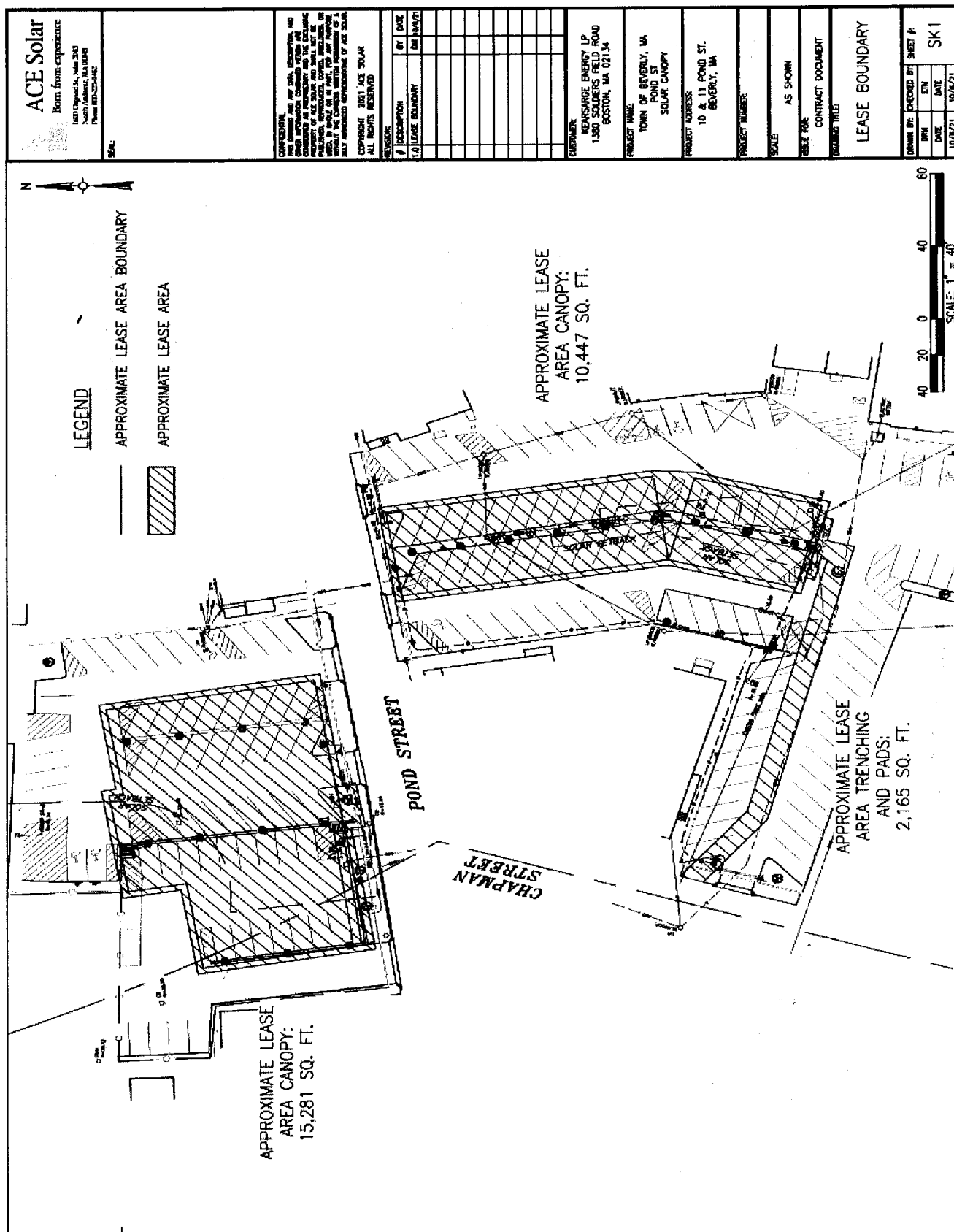


EXHIBIT B-3

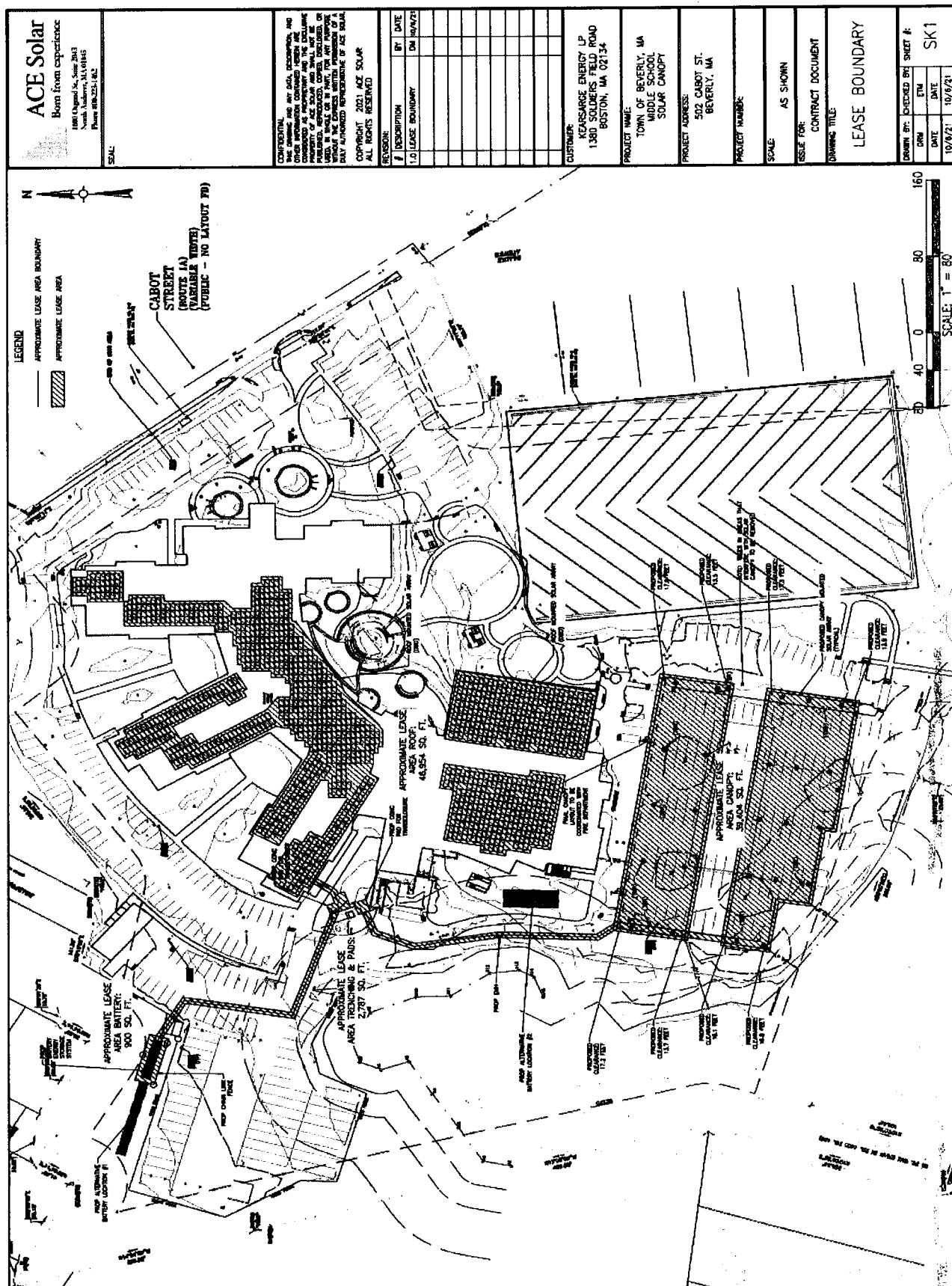
DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA - 10 POND STREET



DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA – 11 POND STREET



DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA – 502 CABOT STREET



DESCRIPTION OF LEASE AREA, INCLUDING CABLE AREA – 100 SOHIER STREET

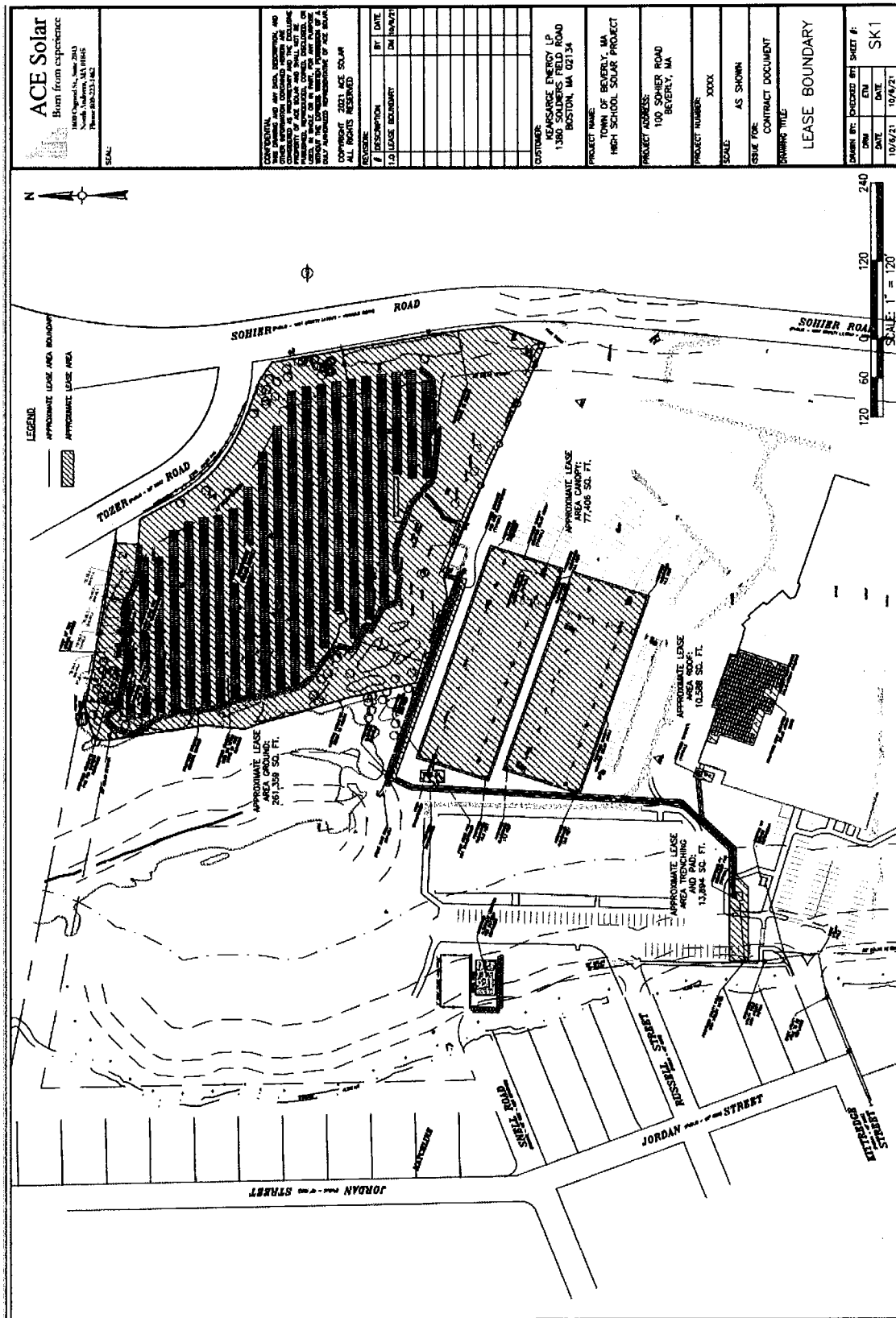


EXHIBIT C

BASE RENT

Annual Rent to be Paid in Advance in accordance with Section 4 of this Lease.

Site	100 Sohier Canopy	100 Sohier Ground	502 Cabot Roof	502 Cabot Canopy	10/11 Pond Canopy	90 Colon Roof	191 Cabot Roof	Subtotal	Total
Size (kW DC)	1139	1498	485	679	436	35	29	4301	
Rent (\$/kW DC)	10	20	20	0	0	20	20	12.2	
Year	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	0	0	0	0	0	0	0	0	10
2	0	0	0	0	0	0	0	0	10
3	0	0	0	0	0	0	0	0	11
4	0	0	0	0	0	0	0	0	11
5	0	0	0	0	0	0	0	0	11
6	0	0	0	0	0	0	0	0	11
7	0	0	0	0	0	0	0	0	12
8	0	0	0	0	0	0	0	0	12
9	0	0	0	0	0	0	0	0	12
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18	0	0	0	0	0	0	0	0	15
19	0	0	0	0	0	0	0	0	16
20	0	0	0	0	0	0	0	0	16
Total	0	0	0	0	0	0	0	0	255

EXHIBIT D

Estimated cost of Removal of the System and Restoration of the Premises

To be attached pursuant to Section 5.1

	Site	100 Sohler Road Canopy	100 Sohler Road Ground	502 Cabot St Roof	502 Cabot St Canopy	10/11 Pond St Canopy	90 Colon St Roof	191 Cabot St Roof	Total
Description	Size DC kW	1139	1498	485	679	436	35	29	4,301
Remove all PV Equipment		-70,000	-75,000	-40,000	-30,000	-23,124	-5,500	-5,500	-249,124
Restore Loam and Seed			-15,000						-15,000
Salvage		92,949	6,515	26,518	55,410	35,580	1,914	1,586	220,472
Disposal Fee		-7,932	-4,494	-5,132	-4,728	-3,036	-370	-307	-26,000
Total		15,017	-87,979	-18,614	20,682	9,420	-3,957	-4,221	-69,652

EXHIBIT E**DEFINITIONS**

Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Additional Rent" has the meaning set forth in Section 4.2.

"**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"**Agreement**" means the Solar Power & Services Agreement.

"**Allocated Percentage**" means the percentage of Alternative On-Bill Credit Production to be allocated to Purchaser, as set forth in **Schedule 2** of the Special Conditions.

"**Allowed Disruption Time**" has the meaning set forth in Section 8.3(b).

"**Alternative On-Bill Credit(s)**" or "AOBC(s)" means a monetary on-bill electricity credit provided by the Local Electric Utility in accordance with the SMART Program in connection with electricity generated by a solar system qualified as an Alternative On-Bill Credit Generation Unit under the SMART Program.

"**Alternative On-Bill Credit Production**" means the amount of energy delivered to the Local Electric Utility generated by the System.

"**Anticipated Commercial Operation Date**" has the meaning set forth in the Special Conditions, which date shall be extended day-for-day for Force Majeure Events and as provided in Section 2.2(A).

"**Annual kWh Cap**" means the maximum amount of kWhs of Alternative On-Bill Credit Production for which Purchaser shall be required to make payment in accordance with Section 6.1, as set forth in Schedule 2 of the Special Conditions.

"**AOBC Price**" means the price for AOBCs set forth on Schedule 2 of the Special Conditions.

"**Applicable Law**" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"**Applicable Legal Requirements**" has the meaning set forth in Section 2.

"**Bankruptcy Event**" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate

manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Base Rent” has the meaning set forth in Section 4.1.

“Basic Service Rate” has the meaning set forth on Schedule 2 of the Special Conditions.

“Billing Cycle” means the monthly billing cycle established by the Local Electric Utility with respect to the Host Customer.

“Bonds for the Installation Work” has the meaning set forth in Section 5.8.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” and “Commercial Operation Date” have the meaning set forth in Section 3.1.3.

“Commercially Reasonable Efforts” means a level of effort which in the exercise of prudent judgment in the light of facts or circumstances known, or which should reasonably be known, at the time a decision is made, can be expected by a reasonable person to accomplish the desired result.

“Construction Period Rent” has the meaning set forth in Section 4.1(a).

“Construction Plans” has the meaning set forth in Section 5.1(C)>

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable under the circumstances described in Sections 2.2(B), 11.2(b) and 12.1, in such amount as set forth in Schedule 3 of the Special Conditions.

“Effective Date” has the meaning set forth in the preamble.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, RPS Class I Renewable Generation Attribute(s) as defined under the SMART Program or Green-e® products.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Financing Notice” has the meaning set forth in Section 14.1.

"Financing Party" means, as applicable (i) any Person (or its agent) from or to whom Provider (or an Affiliate of Provider) leases the System, pursuant to a financing or other lease or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

"Floor Rate" has the meaning set forth in Schedule 2 of the Special Conditions.

"General Conditions" means these Terms and Conditions.

"Governmental Approval(s)" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Host Customer" means Purchaser and shall have the meaning given this term in the Local Electric Utility tariff.

"Incentive Payment Effective Date" has the meaning set forth in the SMART Tariff.

"Indemnified Persons" means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

"Initial Term" has the meaning set forth in Section 2.1 for the time period specified in the Special Conditions.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

"kWh Rate" means the price per kWh set forth in Schedule 2 of the Special Conditions.

"Land Use Approvals" has the meaning set forth in Section 2.

"Lease" has the meaning set forth in the preamble.

"Lease Area" has the meaning set forth in Section 1.1, Exhibits B-1 through B-6.

"Lessee" shall have the meaning ascribed to it in the preamble.

"Lessor" shall have the meaning ascribed to it in the preamble.

"Lessor Claims" has the meaning set forth in Section 10.3.

"Lessee Parties" has the meaning set forth in Section 10.3.

"Lessor Parties" has the meaning set forth in Section 11.2(b).

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

"Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, reasonable costs and expenses (including all reasonable attorneys' fees and other costs and expenses

incurred in defending any such claims or threatened claims or other matters or in asserting or enforcing any indemnity obligation).

"Operations Year" means each 12-month period beginning on the Incentive Payment Effective Date and each anniversary thereof.

"Party" or "Parties" Purchaser and Provider may be referred to herein individually as a Party and collectively as the Parties.

"Permitted Institutional Mortgage" has the meaning set forth in Section 14.1.

"Permitted Uses" has the meaning set forth in Section 2.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Premises" means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of the Special Conditions.

"Property" shall have the meaning ascribed to it in the recitals.

"Provider" has the meaning set forth in the preamble to these General Conditions.

"Renewal Term" has the meaning set forth in Section 3.2.1.

"Rent" has the meaning set forth in Section 4.2.

"Repair Expense" has the meaning set forth in Section 8.3(d).

"Retail Rate" has the meaning set forth in the Special Conditions Schedule 2.

"RFP" shall have the meaning ascribed to it in the recitals.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the "Incentive Payment" under the SMART Program and all other solar or renewable energy subsidies and incentives but does not include the Allocated Percentage and associated AOBs.

"Solar Massachusetts Renewable Target Program" or "SMART Program" means, collectively, and as amended from time to time, the SMART regulations, 225 CMR 20.00 *et. seq.*, the SMART Tariff, orders and guidelines issued by the Massachusetts Department of Public Utilities (DPU) and Massachusetts Department of Energy Resources ("DOER"), and the associated tariff(s) of the Local Electric Utility.

"Solar Power & Services Agreement" means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) consisting of these General Conditions (including the Exhibits attached hereto) and the Special Conditions to the extent incorporated therein.

"Special Conditions" means the Solar Power and Services Agreement, excluding these General Conditions.

"SPSA" shall have the meaning ascribed to it in the recitals.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"Subordination, Nondisturbance and Attornment Agreement" has the meaning set forth in Section 14.2.

"System" or "Solar System" means the integrated assembly of photovoltaic panels, battery energy storage systems, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions that generates electricity and which will be constructed on the Premises.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance the requirements herein.

"Term Commencement Date" has the meaning set forth in Section 3.1.2.

"Term Commencement Obligations" has the meaning set forth in Section 3.1.2.

**Order Authorizing Execution of
Solar Power & Services Agreement**

The Mayor, on behalf of the City, is authorized to enter into and execute a twenty (20) year Solar Power and Services Agreement with Kearsarge Beverly, LLC ("Kearsarge") in connection with Kearsarge's installation operation of solar photovoltaic system facilities at 90 Colon Street (rooftop), 191 Cabot Street (rooftop), 502 Cabot Street (rooftop, canopy), 10 Pond Street (canopy), 11 Pond Street (canopy), and 100 Sohier Road (canopy, ground). The agreement is attached hereto.

This Order further authorizes the Mayor to execute any formalities relative to the agreement including the revision of any scrivener and/or clerical errors and to make edits that do not materially change the substance of the agreement.

**GENERAL TERMS AND CONDITIONS OF
SOLAR POWER & SERVICES AGREEMENT**

These General Terms and Conditions ("General Conditions") are dated as of ____ day of _____, 2022 and are witnessed and acknowledged by Kearsarge Beverly LLC ("Provider") and the City of Beverly ("Purchaser"), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into any Solar Power & Services Agreements that may be entered into between Provider and Purchaser or between their respective affiliates.

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means the Solar Power & Services Agreement.

"Allocated Percentage" means the percentage of Alternative On-Bill Credit Production to be allocated to Purchaser, as set forth in Schedule 2 of the Special Conditions.

"Alternative On-Bill Credit(s)" or "AOBC(s)" means a monetary on-bill electricity credit provided by the Local Electric Utility in accordance with the SMART Program in connection with electricity generated by a solar system qualified as an Alternative On-Bill Credit Generation Unit under the SMART Program.

"Alternative On-Bill Credit Production" means the amount of energy delivered to the Local Electric Utility generated by the System.

"Anticipated Commercial Operation Date" has the meaning set forth in the Special Conditions, which date shall be extended day-for-day for Force Majeure Events and as provided in Section 2.2(A).

"Annual kWh Cap" means the maximum amount of kWhs of Alternative On-Bill Credit Production for which Purchaser shall be required to make payment in accordance with Section 6.1, as set forth in Schedule 2 of the Special Conditions.

"AOBC Price" means the price for AOBCs set forth on Schedule 2 of the Special Conditions.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such

Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

"Basic Service Rate" has the meaning set forth on Schedule 2 of the Special Conditions.

"Billing Cycle" means the monthly billing cycle established by the Local Electric Utility with respect to the Host Customer.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business.

"Commercial Operation" and "Commercial Operation Date" have the meaning set forth in Section 3.3(b).

"Commercially Reasonable Efforts" means a level of effort which in the exercise of prudent judgment in the light of facts or circumstances known, or which should reasonably be known, at the time a decision is made, can be expected by a reasonable person to accomplish the desired result.

"Confidential Information" has the meaning set forth in Section 15.1.

"Early Termination Date" means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable under the circumstances described in Sections 2.2(B), 11.2(b) and 12.1, in such amount as set forth in Schedule 3 of the Special Conditions.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, RPS Class I Renewable Generation Attribute(s) as defined under the SMART Program or Green-e® products.

“Estimated Allocated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Financing Party” means, as applicable (i) any Person (or its agent) from or to whom Provider (or an Affiliate of Provider) leases the System, pursuant to a financing or other lease or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Floor Rate” has the meaning set forth in Schedule 2 of the Special Conditions.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means these Terms and Conditions.

“Governmental Approval(s)” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Host Customer” means Purchaser and shall have the meaning given this term in the Local Electric Utility tariff.

“Incentive Payment Effective Date” has the meaning set forth in the SMART tariff.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1 for the time period specified in the Special Conditions.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 of the Special Conditions.

“Lease” has the meaning set forth in Section 11.2(b).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, reasonable costs and expenses (including all reasonable attorneys’ fees and other costs and expenses incurred in defending any such claims or threatened claims or other matters or in asserting or enforcing any indemnity obligation).

“Operations Year” means each 12-month period beginning on the Incentive Payment Effective Date and each anniversary thereof.

“Party” or “Parties” Purchaser and Provider may be referred to herein individually as a Party and collectively as the Parties.

“Payment” has the meaning set forth in Section 6.1.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the preamble to these General Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Representatives” has the meaning set forth in Section 15.1.

“Retail Rate” has the meaning set forth in the Special Conditions Schedule 2.

“Security Interest” has the meaning set forth in Section 8.2.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the “Incentive Payment” under the SMART Program and all other solar or renewable energy subsidies and incentives but does not include the Allocated Percentage and associated AOBCs.

"Solar Massachusetts Renewable Target Program" or "SMART Program" means, collectively, and as amended from time to time, the SMART regulations, 225 CMR 20.00 *et. seq.*, the SMART Tariff, orders and guidelines issued by the Massachusetts Department of Public Utilities (DPU) and Massachusetts Department of Energy Resources ("DOER"), and the associated tariff(s) of the Local Electric Utility.

"Solar Power & Services Agreement" means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) consisting of these General Conditions (including the Exhibits attached hereto) and the Special Conditions to the extent incorporated therein.

"Special Conditions" means the Solar Power and Services Agreement, excluding these General Conditions.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"System" or "Solar System" means the integrated assembly of photovoltaic panels, battery energy storage systems, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions that generates electricity and which will be constructed on the Premises.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance the requirements herein.

"Term" has the meaning set forth in Section 2.1.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term.

(A) The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operation Date (the "Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement or the Lease.

2.2 Early Termination by Purchaser

(A) Purchaser may terminate this Agreement with no liability whatsoever if Provider fails to meet the Term Commencement Obligations on or before the Term Commencement Deadline as set forth in the Lease.

(B) Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice to the Provider. In such case, Provider shall be entitled to the remedies set forth in section 11.2(b) herein and section 13.3 of the Lease.

2.3 Removal of System at Expiration. Upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises in accordance with the terms of the Lease.

2.4 Development Efforts: Provider agrees to use Commercially Reasonable Efforts to develop the project, which includes completing the required due diligence at the site, securing all required permits and approvals, negotiating the interconnection agreement with the utility, securing the financing for the project.

2.5 Purchaser Conditions of the Agreement Prior to Installation: Subject to the limitations in (a) and (b) below, purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Prior to the Provider purchasing any solar modules for construction of the project or in the event there is a material adverse change in, Applicable Law, that could reasonably be expected to adversely affect the economics of the installation for Purchaser.

(b) Purchaser may (at its sole discretion) terminate the Agreement, upon thirty (30) days' prior notice to Provider in the event that Commercial Operation has not occurred by June 30, 2023.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM

3.1 Installation Work. Provider will cause the System to be designed, engineered, permitted and constructed substantially in accordance with the provisions set forth in Section 5 of the Lease.

3.2 Purchaser Inspection and Review Rights. Provider shall give to Purchaser the reasonable opportunity to (i) review and approve the System design, construction plans and engineering evaluations, and (ii) inspect the System from time to time, both as set forth in the Lease.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in New England. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser representative to observe testing.

(b) "Commercial Operation" shall occur when the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, the System has been approved for interconnected operation by the Local Electric Utility, and the Provider has received the Incentive Payment Effective Date under the Solar Massachusetts Renewable Target Program, then Provider shall send a written notice and supporting documentation to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date".

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned or leased by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense.

4.2 Metering. There will be a separate meter installed and maintained by the Local Electric Utility ("Utility Meter"), which will measure the net amount of electrical energy generated by the System and delivered to the Local Electric Utility to determine Alternative On-Bill Credit Production. Provider may, at its discretion, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may also, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility at the Premises.

4.3 Meter Accuracy. Provider may, on its own initiative, and shall upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the meter.

4.4 Provider Performance Regarding AOBC Worksheet. Provider shall manage the AOBC Worksheet, in the form required by DOER, process, and the periodic amendments of the AOBC Worksheet that Purchaser may require, in the Purchaser's sole discretion, to effect the transfer of AOBCs to Purchaser's Local Electric Utility accounts as limited only by the SMART Program requirements and Applicable Law. Purchaser shall cooperate with Provider in connection with such management by executing documents prepared by Provider that are required to give effect to this Section.

5. DELIVERY OF ALTERNATIVE ON BILL CREDITS.

5.1 Purchase and Sale Requirement. Provider agrees to sell to Purchaser and Purchaser agrees to purchase from Provider the Allocated Percentage of AOBCs delivered by the Local Electric Utility and applied to Purchaser's Local Electric Utility accounts with respect to electricity generated by the System and delivered to the Local Electric Utility during the Term.

5.2 Estimated Annual Alternative On-Bill Credit Production. The estimated allocated annual production for each Operations Year during the Term ("Estimated Allocated Annual Production") is set forth on Schedule 4 of the Special Conditions. For the purpose of clarification, the estimated number of AOBCs allocated to Purchaser shall be the Allocated Percentage.

5.2 Environmental Attributes and Solar Incentives. Purchaser's purchase of AOBC's does not include Environmental Attributes or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.2.

5.3 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and, to the extent consistent with applicable law, Parties agree that the System shall be considered personal property and not real property belonging to Provider.

5.4 SMART Program. The Provider will undertake all steps necessary to qualify the System for the SMART Program. The Parties will work cooperatively and in good faith to effect the transfer of AOBCs to Purchaser's Local Electric Utility accounts in accordance with all SMART Program requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., required utility paperwork) including any AOBCs that may be attributable to the Alternative On-Bill Credit Production prior to the Incentive Payment Effective Date. Provider shall be responsible for all fees associated with the SMART Program incentives.

6. PRICE AND PAYMENT.

6.1 Consideration. The AOBC Price shall be calculated as specified on Schedule 2 of the Special Conditions. The value of AOBCs under the SMART Program may vary with energy market pricing and the Local Electric Utility's fixed basic service tariff ("Basic Service Rate") applicable to the System, which will be revised by the Local Electric Utility from time to time during the Term. Accordingly, the Purchaser understands that the value of AOBCs may change from time to time during the Term. Provider covenants and agrees, to the extent available as an option, to elect and maintain with the Local Electric Utility the right to receive during the Term AOBCs based on the "fixed rate" Basic Service Rate and shall not elect to receive AOBCs based on the "monthly variable" Basic Service Rate, as may be available.

6.2 Invoice. Provider shall invoice Purchaser (each, an "Invoice Date") in accordance with the provision set forth in the Special Conditions, Schedule 2 - AOBC Price; Allocated Percentage and Annual kWh Cap, commencing on the first Invoice Date to occur after the Commercial Operation Date, for the monthly payment (the "Payment") and with respect to each monthly Billing Cycle of the Term.

6.3 Time of Payment. Purchaser shall use its best efforts to pay all undisputed amounts due hereunder within thirty (30) days of the Invoice Date, within the time specified in the Special Conditions.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by check or electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due (other than payments that Purchaser has disputed pursuant to Section 6.5 shall bear interest accruing from the date due until paid in full at a rate equal to the Stated Rate, to the extent permitted by law. Except for billing errors or as provided in Section 6.6 below, all payments made hereunder shall be non-refundable, made free and clear of any tax, levy, assessment, duties or other charges, and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a bonafide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Purchaser shall not be required to pay any amount disputed in good faith. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date due under such invoice until the date paid. If an amount paid by Purchaser is subject to dispute and it is later determined that Purchaser was not required to pay such amount, that amount shall accrue interest at the Stated Rate from the date paid and shall be returned to Purchaser unless Purchaser in writing authorizes Provider to retain that amount, plus such interest, as a credit against future amounts due from Purchaser under this Agreement.

6.6 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment, the quantity of AOBCs is decreased (the "Deficiency Quantity") and the Local Electric Utility makes a corresponding reduction in the amount of AOBCs allocated to Purchaser for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Deficiency Quantity. If as a result of such adjustment the quantity of AOBCs allocated to Purchaser is increased (the "Surplus Quantity") and the Local Electric Utility makes a corresponding increase in the amount of AOBCs allocated to Purchaser for such period, Purchaser shall pay for the value of such increase in the manner described in Section 6.4.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall maintain a remote monitoring system and promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to materially adversely affect the System.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property and in accordance with the Lease, including the Purchaser's "CORI/SORI" requirements and those rules and regulations pertaining to the use of school property established by the Purchaser.

(e) Emergency Unsafe Conditions If Provider becomes aware through remote monitoring, or otherwise, of any unsafe condition with respect to the System or operation thereof, or Purchaser notifies Provider of any such unsafe condition, that requires maintenance, Provider shall respond to such unsafe condition as set forth in the Lease.

(f) [intentionally omitted]

(g) Performance Guarantee. Beginning on the Commercial Operation Date for the System and as of each anniversary thereof, if the System produces less than 80% of the applicable Estimated Allocated Annual Production specified in the Special Conditions, unless, and then only to the extent that, the failure to meet the Estimated Allocated Annual Production is due to (a) failure, damage or downtime attributable to third parties (to the extent that such third parties are agents or subcontractors of Purchaser) or Purchaser, (b) a Force Majeure Event, (c) acts or omissions of Purchaser contrary to any of its obligations hereunder; or (d) removal of the System for Purchaser repairs to the Premises as set forth in Section 8.3 of the Lease; in its next invoice Provider shall credit Purchaser an amount equal to the difference between the applicable Estimated Allocated Annual Production and the actual Alternative On-Bill Credit Production multiplied by \$0.01/kWh.

(h) Interconnection Fees. Provider shall be responsible for the payment of all costs, fees, and charges to National Grid and any related obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with System upgrades and operation and maintenance carrying charges ("Interconnection Obligations").

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Documentation. Purchaser shall provide to Provider such documentation (including data release forms to authorize Provider to obtain billing statements from the Local Electric Utility), as may be reasonably needed in order for Provider to prepare the invoices described in Section 6.2.

(b) Host Customer. Purchaser shall execute documents prepared by Provider to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the Host Customer of each Local Electric Utility meter related to the System for purposes of the SMART Program, as applicable. Provider shall assist Purchaser in this process, or, alternatively, establish such account in Provider's name

and transfer it to Purchaser. Purchaser shall comply with any requirements specified on Schedule 1 of the Special Conditions that are necessary for the System to meet and maintain eligibility under the SMART Program, including eligibility for any applicable adders. Purchaser agrees to supply any information and complete any form that may be required to verify eligibility of the System to participate in the SMART Program or receive certain benefits under the SMART Program, or as Provider may otherwise reasonably request to the extent reasonably necessary to perform its obligations under this Agreement. Purchaser agrees to complete and to provide to Provider on the Effective Date a customer disclosure form as required under the SMART Program.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations, consents or customary estoppels (each, a "Consent Agreement") required of Purchaser under this Agreement are provided in a timely manner. Purchaser shall not be obligated to execute any Consent Agreement that alters the risk or benefits to the Purchaser under this Agreement. Provider shall reimburse Purchaser for its reasonably incurred costs in connection with Purchaser's execution of any Consent Agreement that is not customary or of an administrative or routine nature. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives. Cooperation means that the Purchaser generally will execute document required such as applications, or letters that are prepared by the Provider for Purchaser execution.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or municipal or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party.

Any Financing Party shall be an intended third-party beneficiary of this Agreement and is entitled to the rights of a Permitted Institutional Mortgagee as set forth in the Lease.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of Commercially Reasonable Efforts (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, pandemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority (unless Purchaser is a Governmental Authority and the Governmental Authority which took action such that the Purchaser is the Party whose performance is affected by such action nor inaction). A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all Commercially Reasonable Efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv)

resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of AOBC's delivered to Purchaser prior to the Force Majeure Event performance interruption unless the act of making payment is also rendered impossible by the Force Majeure Event.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider's obligation to remove said System and any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of default notice from Purchaser, delivered in accordance with Section 14, Notices, regarding such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) fails to cure such breach within thirty (30) days after Purchaser's written notice of such breach, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed, up to a maximum of ninety (90) additional days based upon the time reasonably needed to cure the default;
- (iv) Any representation or warranty by Provider is incorrect or incomplete in any material respect, or omits any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within thirty (30) days after receipt of notice from Purchaser identifying the defect.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to the rights of a Financing Party and Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Purchaser shall use reasonable efforts to mitigate its damages.

11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within ninety (90) days after receipt of a default notice delivered in accordance with Schedule 5 of the Special Conditions of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such ninety (90) day period if a longer cure period is needed; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within 45 days days from receipt of an invoice from Provider delivered in accordance with Schedule 5 of the Special Conditions regarding such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, subject to Section 12, Provider shall be entitled to exercise its right under the Lease Agreement by and between Provider and Purchaser dated on or about the date hereof (the "Lease") to maintain the System at the Premises and Provider shall make all arrangements required to remove Host Customer as the customer of record on the applicable Local Electric Utility meters and designate instead the Provider as the customer of record; and provided, further, that Provider may only maintain those portions of the System at the 191 Cabot Street (City Hall) and 90 Colon Street (Senior Center) sites if Provider converts said portions to so-called stand-alone installations. If Provider is unable to satisfy the conditions for maintaining the City Hall and Senior Center portions of the System and Provider and Purchaser do not otherwise agree on a remedy on account thereof, at the Purchaser's election the Provider's remedy shall be the greater of (i) the Purchaser's payment of the Early Termination Fee amount allocable to those portions of the System in Schedule 3 of the Special Conditions, or (ii) the Purchaser's purchase of the installations at City Hall and/or the Senior Center for fair market value. In any case, in the event of such termination, Provider shall use its best efforts to mitigate any alleged damages. In the event that a Purchaser Default has occurred and Purchaser breaches its surviving obligation to permit Provider to maintain the System at the Premises in accordance with provisions of the Lease Agreement by and between Provider and Purchaser dated on or about the date hereof (the "Lease"), Provider may seek a judicial order for specific performance or the payment of the Early Termination Fee set forth in Schedule 3. With respect to the Systems located at 100 Sohier Road, 10 and 11 Pond Street and 502 Cabot Street, the fee owed under Schedule 3 for any one System shall be proportional to the size of such System. Provider may exercise any other remedy it may have at law or equity or under the Agreement.

12. LIMITATIONS OF LIABILITY.

Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

12.1 A Party's maximum liability to the other Party under this Agreement, shall not exceed the Early Termination Fee specified in Schedule 3 of the Special Conditions as of the date of the events giving rise to such liability; provided, however, the limits of liability under this Section 12.1 shall not apply with respect to (i) indemnity obligations of Provider hereunder in respect of bodily injury or death of a third party or (ii) any obligation of Provider to remove or restore the System as provided herein.

13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to any wholly-owned indirect subsidiary of Kearsarge Solar LLC, a Massachusetts limited liability company or to any Financing Party provided that an Affiliate of Provider retains responsibility for the day-to-day operation of the System; (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). Provider shall give prompt notice to Purchaser of any assignment for which Purchaser's prior consent is not required. In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in the Lease related to a Permitted Institutional Mortgagee. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Purchaser shall not release Purchaser of its obligations hereunder.

13.2. [Intentionally omitted]

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time in the form set forth in Exhibit B to these General Conditions.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S.

mail. Notwithstanding the above, a default notice must be sent by certified mail with return receipt requested, and will be deemed delivered as of the date of the receipt.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides Confidential Information, defined to mean documents labeled by the disclosing party as Confidential Information which fit within the limited exceptions to the Massachusetts public records law, and which receiving party agrees to accept as Confidential Information (hereinafter "Confidential information"), the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. This Agreement once submitted to the Beverly City Council for approval will be deemed a public record and released to any requesting person without notice to any party. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law (including the Massachusetts public records law) or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.
- (e) is deemed a Public Record.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective elected officials, officers, employees, agents, and members of Purchaser's boards, commissions, or committees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence, recklessness, or willful misconduct or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work or System Operations and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence, recklessness, or willful misconduct of any of the Purchaser Indemnified Parties.

17. INSURANCE.

17.1 Generally. Provider shall maintain the insurance coverages described in the Lease.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. Both parties expressly agree that monetary damages shall not exceed the Early Termination Fee specified in Schedule 3 of the Special Conditions.

18.5 [Intentionally Omitted.]

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2B (Early Termination), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts without reference to any choice of law principles. The Parties agree that the courts of Massachusetts shall have exclusive jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties agree that any action or proceeding shall be filed in a court of competent jurisdiction in Essex County of the Commonwealth of Massachusetts. The parties further waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement any courts described in this Section 18.8.

18.9 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Forward Contract; Bankruptcy Code; Service Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are to be considered a "forward contract" within the meaning of the United States Bankruptcy Code, and that Provider is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Provider is not a

“utility” as such term is used in Section 366 of the United States Bankruptcy Code. The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

18.12 [Intentionally Omitted]

18.13 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.15 Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic “pdf” delivery of its signature to the other Party.

[Remainder of page intentionally left blank.]

These General Terms and Conditions are executed by Provider and Purchaser below. .

"PROVIDER:

KEARSARGE BEVERLY LLC

By: Kearsarge Solar LLC, its manager

By: _____

Name: Andrew J. Bernstein _____

Title: Manager _____

Date: _____

"PURCHASER": CITY OF BEVERLY

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
of General Conditions

Certain Agreements for the Benefit of the Financing Parties

Financing Parties shall have the rights of a Permitted Institutional Mortgagee as set forth in the Lease.

WITNESSED BY
[Signature]

[Signature] [Title]

[Signature] [Title]

WITNESSED BY
[Signature]

[Signature] [Title]

[Signature] [Title]

Exhibit B
CORI/SORI, as provided in the Lease

The installation and subsequent maintenance of some of the System(s) will occur on the grounds of occupied School buildings during the School year. As such the City of Beverly school district shall conduct checks of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Facilities Board, fingerprinting (CHRI/SAFIS), and the Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the Provider or of a subcontractor or any person who will work on the System(s) on a School site. The Purchaser may refuse to allow any such person to work on the Project site if the Purchaser, in its sole discretion, determines that such employee or subcontractor is not suitable for work on the System(s) site based upon the results of such CORI, CHRI/SAFIS, or SORI. All Provider employees, subcontractor employees, or other individuals who will work on the System(s) site shall initiate a CORI, CHRI/SAFIS, and SORI search by completing forms and presenting identification at the location to be specified by the Purchaser. The school district shall have the right to instruct the Provider, its employees, and its subcontractors to complete the CORI, CHRI/SAFIS, and SORI background check at any time for any reason or no reason even if individuals have already completed the background check. The costs associated with the background check including but not limited to fingerprinting shall be at the sole expense of the Purchaser or of a subcontractor or any person who will work on the System(s) on a School site.

Exhibit C
of General Conditions

[Updated Notice Information Form]

The notice obligation described in Exhibit A is limited to providing notice to the following Financing Parties at the addresses listed in the table below, as this Table may be updated from time to time by the Provider, using the notice procedures in Section 14.

Financing Party	Address	Contact Person	Telephone

SOLAR POWER & SERVICES AGREEMENT

SPECIAL CONDITIONS

These Special Conditions of the Solar Power & Services Agreement ("Agreement") are made and entered into as of this ____ day of ___, 2020, between Kearsarge Beverly LLC, a Massachusetts limited liability company ("Provider"), and the City of Beverly ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Provider intends to construct, install, own, operate, and maintain a solar photovoltaic system at the Premises described on Schedule 1;

WHEREAS, the Parties intend that, pursuant to the SMART Program, the System will qualify as an Alternative On-Bill Credit Generation Unit under the SMART Program and will generate AOBCs. ;

WHEREAS, Purchaser is willing to purchase, or pay to be allocated, the Allocated Percentage (as set forth in Schedule 3 hereof) of the Alternative On- Bill Credit Production to be generated by the System (subject to the Annual kWh Cap (as set forth in Schedule 2 herein), and Provider is willing to sell, or cause to be allocated, the Allocated Percentage of the Alternative On-Bill Credit Production to be generated by the System to Purchaser as provided for under the terms of this Agreement;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of even date hereof ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are hereby incorporated herein as if set forth in their entirety; provided, however:
 - a. Section 17 (Insurance) of the General Conditions shall not apply; and
 - b. Provider covenants to comply with the supplemental covenants set forth in 8.

2. Schedules. The following are the respective Schedules to the Special Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate; Allocated Percentage; Annual kWh Cap
Schedule 3	Early Termination Fee
Schedule 4	Estimated Allocated Annual Production
Schedule 5	Notice Information
Schedule 6	Time of Payment
Schedule 7	Term
Schedule 8	Supplemental Covenants
Schedule 9	Development Schedule
Schedule 10	Insurance

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

KEARSARGE BEVERLY LLC

CITY OF BEVERLY

By: Kearsarge Solar LLC, its manager

By: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

Name: _____
 Title: _____
 Date: _____

IN WITNESS WHEREOF, the undersigned, being the duly authorized signatory of the undersigned, have hereunto set their hands and seals at the City of Beverly, Massachusetts, on this _____ day of _____, 20____.

KEARSARGE BEVERLY LLC

CITY OF BEVERLY

By: Kearsarge Solar LLC, its manager

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

IN WITNESS WHEREOF, the undersigned, being the duly authorized signatory of the undersigned, have hereunto set their hands and seals at the City of Beverly, Massachusetts, on this _____ day of _____, 20____.

KEARSARGE BEVERLY LLC

CITY OF BEVERLY

By: Kearsarge Solar LLC, its manager

SCHEDULES

I. Schedule 1: Description of Premises and System

System Premises:	The Leased Premises identified and described in the Site Lease executed by and between the City of Beverly and Kearsarge Beverly LLC, contemporaneously herewith.
Premises is Owned by:	Purchaser
Purchaser is to be the Host Customer with respect to the Premises.	The Leased Premises identified and described in the Site Lease executed by and between the City of Beverly and Kearsarge Beverly LLC, contemporaneously herewith.

Solar System Size: Collectively, 4.301 MW DC (representing an initial estimate, which may vary depending on the final design of the System).

Scope: Design and supply grid-interconnected, Ground, Rooftop and Canopy mounted solar electric (PV) system.

Module: Varied

Inverter: Varied

Performance Guarantee: Eighty-percent (80%) of Estimated Allocated Annual Production

Construction Start Date: Varied

CORI/SORI Provisions Apply: Yes. The applicable school system/district for the purposes of the terms set forth in Exhibit B of the General Conditions is: City of Beverly.

Effective Date: The date on which the Agreement has been executed by both parties.

Anticipated Commercial Operation Date: On or before June 30, 2023

II.

Schedule 2 – AOBC Price; Allocated Percentage and Annual kWh Cap

For each Billing Cycle in which the System delivers electricity to the Local Electric Utility in the case of Stand-Alone Installations or to the Utility Meter in the case of Behind-the-Meter Installations, the AOBC Price shall be in accordance with the Local Electric Utility AOBC tariff in effect at the time for the specified rate class of the Utility Meter at the location.

(a). Monthly Invoices:

Provider shall invoice Purchaser monthly for the total electricity generation ("Total Generation") produced in the monthly Billing Cycle and as allocated to individual Purchaser accounts with the Local Electric Utility ("Allocated Generation"). Each invoice shall include the following documentation:

Generation from Stand-Alone Systems:

(i). Provider shall provide a copy of the Local Electric Utility issued invoices for the Total Generation for the Billing Cycle.

(ii). Provider shall provide a worksheet identifying the target Local Electric Utility account from the AOBC Worksheet, the allocated percentage of the Total Generation, the total Allocated Generation, the AOBC unit rate presented on the Local Electric Utility issued invoice, the total AOBC dollar credit expected to be transferred by the Local Electric Utility and the total amount owed to Provider based on the formula below in (c).

Generation from Behind-the-Meter Systems:

(i). Purchaser shall provide a copy of the Local Electric Utility issued invoice for the Local Electric Utility account for each Billing Cycle or shall allow Provider to obtain such Local Electric Utility issued invoice directly from the Local Electric Utility.

(ii). Provider shall provide a total generation worksheet (the "Total Generation Worksheet") identifying the daily electricity generation produced by the System from Provider's data acquisition system ("DAS"). The Total Generation Worksheet shall also include the cumulative generation to date for the corresponding date.

(iii). The Total Generation Worksheet shall include a presentation based on the formula below in (d) of the AOBC Price due to Provider.

(b). Project Interconnection Configuration:

LOCATION	INTERCONNECTION CONFIGURATION
191 Cabot Street	Behind-the-Meter
90 Colon Street	Behind-the-Meter
100 Sohier Road	Stand-Alone
502 Cabot Street	Stand-Alone
10 Pond Street	Stand-Alone
11 Pond Street	Stand-Alone

(c). Stand-Alone Installation AOBC Formula:

The AOBC Price shall be equal to the Local Electric Utility's AOBC fixed unit rate on a per kilowatt-hour basis minus \$0.01 per kilowatt-hour multiplied by the Allocated Generation produced by the System on a per kilowatt-hour basis and delivered to the Local Electric Utility during such Billing Cycle. The Allocated Generation shall be the percentage of the Total Generation from the System as detailed on the AOBC Worksheet.

$$\text{Formula: AOBC Price} = (\text{Fixed AOBC } \$/\text{kWh unit rate} - \$0.01/\text{kWh}) \times \text{Allocated Generation in kWh.}$$

(d). Behind-the-Meter Installation AOBC Formula:

The AOBC Price shall be equal to the sum of the Total Generation in kilowatt-hours as reported by the Provider's DAS at the specified location during the Billing Cycle that coincides with the Utility Meter, times the sum of the Retail Rate for the Utility Meter at the location minus \$0.01 per kilowatt-hour, less any monthly minimum reliability contribution charge ("MMRC") (as applicable).

Retail Rate includes the following monthly charges for the Billing Cycle: (i) energy supply charge in \$/kWh, plus (ii) distribution charge in \$/kWh, plus (iii) transmission charge in \$/kWh, plus (iv) transition charge in \$/kWh, plus (v) demand charge in \$/kW.

The AOBC Price shall exclude any MMRC charge which is a non-bypassable minimum bill charge.

Formula: AOBC Price = (Retail Rate \$/kWh - \$0.01/kWh) x DAS Total Generation - MMRC \$ charge.

Allocated Percentage: 100%

Annual kWh Cap: 115% of total Estimated Allocated Annual Production unless the Purchaser agrees in writing to purchase in excess of this cap in any given year.

III. Schedule 3 – Early Termination Fee

The fee that is payable by Provider as set forth in Sections 11.1 (b) and 12.1.

Year	Guaranteed Annual Production (kWh)	Expected Energy Savings (\$/kWh)	Exp. Energy Savings (\$)	Expected Lease Payments (\$)	Expected Tax Payments (\$)	Expected Total Payments (\$)	Termination Value at Start of Year (\$)
1	3,929,217	0.010	39,292	10	54,092	93,394	1,054,535
2	3,909,571	0.010	39,096	10	54,092	93,198	1,024,413
3	3,890,023	0.010	38,900	11	54,091	93,002	992,680
4	3,870,573	0.010	38,706	11	54,091	92,808	959,239
5	3,851,220	0.010	38,512	11	54,091	92,614	923,985
6	3,831,964	0.010	38,320	11	54,091	92,422	886,810
7	3,812,804	0.010	38,128	12	54,090	92,230	847,597
8	3,793,740	0.010	37,937	12	54,090	92,039	806,223
9	3,774,771	0.010	37,748	12	54,090	91,850	762,557
10	3,755,897	0.010	37,559	12	54,089	91,661	716,461
11	3,737,118	0.010	37,371	13	54,089	91,473	667,788
12	3,718,432	0.010	37,184	13	54,089	91,286	616,382
13	3,699,840	0.010	36,998	13	54,088	91,100	562,079
14	3,681,341	0.010	36,813	14	54,088	90,915	504,703
15	3,662,934	0.010	36,629	14	54,088	90,731	444,070
16	3,644,620	0.010	36,446	14	54,087	90,548	379,983
17	3,626,396	0.010	36,264	15	54,087	90,366	312,234
18	3,608,264	0.010	36,083	15	54,087	90,185	240,602
19	3,590,223	0.010	35,902	16	54,086	90,004	164,853
20	3,572,272	0.010	35,723	16	54,086	89,825	84,740

The fee that is payable by Purchaser as set forth in Sections 2.2(B), 11.2(b) and 12.1.

Early Termination Schedule - 191 Cabot							
Year	Expected Production (kWh)	Weighted Average Price (\$/kWh)	Expected Energy Revenue (\$)	NPV 6% of Total Revenue (\$)	Debt Breakage Fee (\$)	Tax Equity Breakage Fee (\$)	Termination Value at Start of Year (\$)
1	33,350	0.272	\$ 9,079	\$ 100,278	\$ 2,245	\$ 54,383	\$ 156,905
2	33,183	0.272	\$ 9,033	\$ 97,216	\$ 2,020	\$ 54,383	\$ 153,619
3	33,017	0.272	\$ 8,988	\$ 94,015	\$ 1,818	\$ 43,506	\$ 139,340
4	32,852	0.272	\$ 8,943	\$ 90,668	\$ 1,636	\$ 32,630	\$ 124,934
5	32,688	0.272	\$ 8,899	\$ 87,165	\$ 1,473	\$ 21,753	\$ 110,390
6	32,525	0.272	\$ 8,854	\$ 83,496	\$ 1,325	\$ 10,877	\$ 95,698
7	32,362	0.272	\$ 8,810	\$ 79,651	\$ 1,193		\$ 80,844
8	32,200	0.272	\$ 8,766	\$ 75,621	\$ 2,245		\$ 77,865
9	32,039	0.272	\$ 8,722	\$ 71,392	\$ 2,020		\$ 73,412
10	31,879	0.272	\$ 8,678	\$ 66,953	\$ 1,818		\$ 68,772
11	31,720	0.272	\$ 8,635	\$ 62,292	\$ 1,636		\$ 63,929
12	31,561	0.272	\$ 8,592	\$ 57,395	\$ 1,473		\$ 58,867
13	31,403	0.272	\$ 8,549	\$ 52,247	\$ 1,325		\$ 53,572
14	31,246	0.272	\$ 8,506	\$ 46,833	\$ 1,193		\$ 48,025
15	31,090	0.272	\$ 8,464	\$ 41,136	\$ 1,074		\$ 42,210
16	30,934	0.272	\$ 8,421	\$ 35,141			\$ 35,141
17	30,780	0.272	\$ 8,379	\$ 28,828			\$ 28,828
18	30,626	0.272	\$ 8,337	\$ 22,179			\$ 22,179
19	30,473	0.272	\$ 8,296	\$ 15,172			\$ 15,172
20	30,320	0.272	\$ 8,254	\$ 7,787			\$ 7,787

Early Termination Schedule - 90 Colon							
Year	Expected Production (kWh)	Weighted Average Price (\$/kWh)	Expected Energy Revenue (\$)	NPV 6% of Total Revenue (\$)	Debt Breakage Fee (\$)	Tax Equity Breakage Fee (\$)	Termination Value at Start of Year (\$)
1	40,250	0.272	\$ 10,957	\$ 121,025	\$ 2,772	\$ 65,635	\$ 189,432
2	40,049	0.272	\$ 10,902	\$ 117,329	\$ 2,495	\$ 65,635	\$ 185,459
3	39,849	0.272	\$ 10,848	\$ 113,467	\$ 2,245	\$ 52,508	\$ 168,220
4	39,649	0.272	\$ 10,794	\$ 109,427	\$ 2,021	\$ 39,381	\$ 150,828
5	39,451	0.272	\$ 10,740	\$ 105,199	\$ 1,819	\$ 26,254	\$ 133,271
6	39,254	0.272	\$ 10,686	\$ 100,771	\$ 1,637	\$ 13,127	\$ 115,535
7	39,057	0.272	\$ 10,633	\$ 96,131	\$ 1,473		\$ 97,604
8	38,862	0.272	\$ 10,579	\$ 91,266	\$ 2,772		\$ 94,038
9	38,668	0.272	\$ 10,527	\$ 86,163	\$ 2,495		\$ 88,658
10	38,475	0.272	\$ 10,474	\$ 80,806	\$ 2,245		\$ 83,051
11	38,282	0.272	\$ 10,422	\$ 75,180	\$ 2,021		\$ 77,201
12	38,091	0.272	\$ 10,369	\$ 69,270	\$ 1,819		\$ 71,088
13	37,900	0.272	\$ 10,318	\$ 63,056	\$ 1,637		\$ 64,693
14	37,711	0.272	\$ 10,266	\$ 56,522	\$ 1,473		\$ 57,995
15	37,522	0.272	\$ 10,215	\$ 49,647	\$ 1,326		\$ 50,973
16	37,335	0.272	\$ 10,164	\$ 42,412			\$ 42,412
17	37,148	0.272	\$ 10,113	\$ 34,793			\$ 34,793
18	36,962	0.272	\$ 10,062	\$ 26,767			\$ 26,767
19	36,777	0.272	\$ 10,012	\$ 18,311			\$ 18,311
20	36,594	0.272	\$ 9,962	\$ 9,398			\$ 9,398

Early Termination Schedule - 10/11 Pond; 502 Cabot; 100 Sohler							
Year	Expected Production (kWh)	Weighted Average Price (\$/kWh)	Expected Energy Revenue (\$)	NPV 6% of Total Revenue (\$)	Debt Breakage Fee (\$)	Tax Equity Breakage Fee (\$)	Termination Value at Start of Year (\$)
1	4,837,921	0.233	\$ 1,126,830	\$ 12,446,063	\$ 404,210	\$ 7,945,533	\$ 20,795,806
2	4,813,731	0.233	\$ 1,121,196	\$ 12,065,997	\$ 363,789	\$ 7,945,533	\$ 20,375,319
3	4,789,663	0.233	\$ 1,115,590	\$ 11,668,761	\$ 327,410	\$ 6,356,426	\$ 18,352,598
4	4,765,714	0.233	\$ 1,110,012	\$ 11,253,297	\$ 294,669	\$ 4,767,320	\$ 16,315,286
5	4,741,886	0.233	\$ 1,104,462	\$ 10,818,483	\$ 265,202	\$ 3,178,213	\$ 14,261,899
6	4,718,176	0.233	\$ 1,098,939	\$ 10,363,131	\$ 238,682	\$ 1,589,107	\$ 12,190,919
7	4,694,586	0.233	\$ 1,093,445	\$ 9,885,979	\$ 214,814		\$ 10,100,793
8	4,671,113	0.233	\$ 1,087,977	\$ 9,385,693	\$ 404,210		\$ 9,789,903
9	4,647,757	0.233	\$ 1,082,537	\$ 8,860,858	\$ 363,789		\$ 9,224,646
10	4,624,518	0.233	\$ 1,077,125	\$ 8,309,972	\$ 327,410		\$ 8,637,382
11	4,601,396	0.233	\$ 1,071,739	\$ 7,731,445	\$ 294,669		\$ 8,026,114
12	4,578,389	0.233	\$ 1,066,380	\$ 7,123,593	\$ 265,202		\$ 7,388,795
13	4,555,497	0.233	\$ 1,061,049	\$ 6,484,628	\$ 238,682		\$ 6,723,310
14	4,532,719	0.233	\$ 1,055,743	\$ 5,812,657	\$ 214,814		\$ 6,027,470
15	4,510,056	0.233	\$ 1,050,465	\$ 5,105,673	\$ 193,332		\$ 5,299,005
16	4,487,505	0.233	\$ 1,045,212	\$ 4,361,549			\$ 4,361,549
17	4,465,068	0.233	\$ 1,039,986	\$ 3,578,029			\$ 3,578,029
18	4,442,743	0.233	\$ 1,034,786	\$ 2,752,725			\$ 2,752,725
19	4,420,529	0.233	\$ 1,029,612	\$ 1,883,102			\$ 1,883,102
20	4,398,426	0.233	\$ 1,024,464	\$ 966,476			\$ 966,476

IV. Schedule 4 – Estimated Allocated Annual Production

Estimated Allocated Annual Production, Estimated Annual Cap and Guaranteed Production commencing on the Commercial Operation Date with respect to the System under the Agreement shall be as follows:

Production Schedule			
Year	Estimated Annual Production (kWh)	Estimated Annual Cap Production 115% (kWh)	Estimated Guaranteed Production 80% (kWh)
1	4,911,521	5,648,249	3,929,217
2	4,886,963	5,620,008	3,909,571
3	4,862,529	5,591,908	3,890,023
4	4,838,216	5,563,948	3,870,573
5	4,814,025	5,536,129	3,851,220
6	4,789,955	5,508,448	3,831,964
7	4,766,005	5,480,906	3,812,804
8	4,742,175	5,453,501	3,793,740
9	4,718,464	5,426,234	3,774,771
10	4,694,872	5,399,102	3,755,897
11	4,671,397	5,372,107	3,737,118
12	4,648,040	5,345,246	3,718,432
13	4,624,800	5,318,520	3,699,840
14	4,601,676	5,291,928	3,681,341
15	4,578,668	5,265,468	3,662,934
16	4,555,774	5,239,141	3,644,620
17	4,532,996	5,212,945	3,626,396
18	4,510,331	5,186,880	3,608,264
19	4,487,779	5,160,946	3,590,223
20	4,465,340	5,135,141	3,572,272
Total	93,701,526	107,756,755	74,961,221

The values set forth in the table above are estimates of approximately how many kWhs are expected to be generated annually by the Systems beginning with the first full year of production anfter reaching Commercial Operation Date on all systems. The table will be updated upon final design of the System. Notwithstanding the right to make modifications following final design, the Annual kWh Cap may not be increased without the approval of the Purchaser.

V. Schedule 5 – Notice Information

Purchaser:

City of Beverly

Attn: Office of the Mayor

191 Cabot St.

Beverly, MA 01915

Default Notices

Copies to City Solicitor

And Finance Director

Provider:

Kearsarge Beverly LLC

Attn: Andrew Bernstein

1380 Soldiers Field Road, Suite 3900

Boston, MA 02135

ap@kearsargeenergy.com

Financing Party:

[To be provided by Provider when known]

VI. Schedule 6 – Time of Payment

Purchaser shall use its best efforts to pay all undisputed amounts due hereunder within thirty (30) days of the date of the applicable Invoice Date.

VII. Schedule 7 – Initial Term

The Initial Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of the Agreement.

VIII. Schedule 8 – Supplemental Covenants of Provider

Provider hereby covenants as follows:

A. NON-DISCRIMINATION.

The Provider will carry out the obligations of this Agreement in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Provider shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, gender identity, sexual orientation

(which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. The previous sentence shall include, but not be limited to, the following: advertising, recruitment; hiring; rates of pay or other forms of compensation; terms; conditions or privileges of employment; employment upgrading; transfer; demotion; layoff; and termination. The Provider shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap.

B. INDEPENDENT CONTRACTOR

The Provider shall provide services under this Agreement as an independent contractor with the Purchaser and not as an employee of the Purchaser. No employee, agent or representative of the Provider shall be entitled to receive any benefits of employment with the Purchaser, including without limitation salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation.

C. USE OF ALCOHOL AND CONTROLLED SUBSTANCES PROHIBITED/NO SMOKING

The Provider hereby acknowledges that the use of alcoholic beverages, narcotics, and mood altering substances, except for current valid, legal prescriptions, by any officer, employee, agent, or representative of the Provider is prohibited on Purchaser's property and during all hours of work under this Agreement. If any officer, employee, agent, or representative of the Provider violates the foregoing provision, the Purchaser shall have the right to order that such officer, employee, agent, or representative of the Provider shall not be permitted to return to work on this Agreement. Under such circumstances, the Provider shall promptly remove the subject officer, employee, agent, or representative from the job site and shall not permit the subject officer, employee, agent, or representative to perform further work in conjunction with this Agreement. Pursuant to Massachusetts General Laws c. 270, §22, the Commonwealth of Massachusetts Smoke free Workplace Law, the Provider, its officers, employees, agents, and representatives shall refrain from smoking and from using tobacco products in any public building of the Purchaser.

D. LIABILITY OF PUBLIC OFFICIALS:

To the full extent permitted by law, no official, employee, agent, commissioner, or representative of the City of Beverly shall be individually or personally liable on any obligation of the Purchaser under this Agreement.

E. CONFLICT OF INTEREST:

Both the Purchaser and Provider acknowledge the provisions of the State Conflict of Interest Law, M.G.L. c. 268A, and this Agreement expressly prohibits any activity which shall constitute a violation of that law. The Provider shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Agreement; and by executing the Agreement, the Provider certifies to the Purchaser that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

IX. Schedule 9 Development Schedule

Provider agrees to use Commercially Reasonable Efforts to develop the project in accordance with the respective non-extendable deadlines and target dates specified below:

Commercial Operation Date: June 30 2023

X. Schedule 10 – Insurance Commencing on the Effective Date except as hereinafter specified and continuing thereafter during the Term, Provider shall procure and maintain at its sole cost and expense, and provide evidence to Purchaser of the following insurance:

i. Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applies per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability

ii. Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.

iii. Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.

iv. Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000

bodily injury per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.

v. Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit.

General Requirements. The following conditions shall apply to the insurance policies required herein:

- a. Provider agrees that the Commercial General Liability insurance set forth above shall be primary and non-contributing with respect to any insurance carried by Purchaser or Provider's subcontractor(s).
- a. Provider's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance.
- b. Provider's insurance shall name the City of Beverly as additional insured as their interests may appear with coverage at least as broad as the coverage provided to the named insured.
- c. The insurance set forth above shall be written on an occurrence basis, unless the Purchaser approves in writing, coverage on a claims-made basis.
- d. Certificates of Insurance reasonably acceptable to the Purchaser that include insurance coverages required and specified above shall be delivered to the Purchaser promptly after execution of the Lease. Each policy shall contain all generally applicable conditions, definition, exclusions and endorsements related to the System.
- e. The certificates and the insurance policies required will contain a provision that coverages afforded under the policies will not be canceled, modified or allowed to expire until at least 30 days' prior written notice has been given to the Purchaser. The Purchaser will accept a 10-day notice for cancellation for non-payment of premium as required by insurance company. In the event that any insurance policy providing coverage required by the Lease is canceled or will expire during the term of the Lease, the Provider will, not less than 15 days prior to the policy's expiration date, deliver to the Purchaser new certificates of insurance evidencing replacement / renewal of such policies.
- f. The failure to provide and continue in force any insurance required in accordance with the terms of the Lease shall constitute a material breach of the Lease.
- g. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to do business in Massachusetts and having a rating no lower than A- (excellent) from A.M. Best's Key Rating Guide (latest edition in effect at the date of the Lease and at the time of renewal of any policies required by the Lease).

(a) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.

(b) Provider's obligation to hold harmless and indemnify Purchaser shall not be limited by the requirement for, or existence of, insurance coverage.

(c) Purchaser shall have the right to require Provider to increase such limits when, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises, in the same geographic region and for the same Permitted Uses, by responsible owners or Providers are generally increased, it being the intention of this sentence to require Provider to take account for inflation in establishing minimum limits of liability insurance as maintained from time to time on the Premises.

f:\solar\rfp city and school 2018\lease and ppa\ppa\2022.3.15. final 22-0311 ks to 2022.3.9. city comments.docx

Order Authorizing Payment in Lieu of Taxes for Personal Property

The Mayor, on behalf of the City, is authorized to sign and enter into an Agreement for Payment in Lieu of Taxes for Personal Property ("PILOT"), pursuant to M.G.L. ch. 59, section 5, clause 45, in connection with the construction and maintenance of solar photovoltaic systems at 90 Colon Street (rooftop), 191 Cabot Street (rooftop), 502 Cabot Street (rooftop, canopy), 10 Pond Street (canopy), 11 Pond Street (canopy), and 100 Sohier Road (canopy, ground). The PILOT agreement is attached hereto.

This Order further authorizes the Mayor to execute any formalities relative to this PILOT including the revision of any scrivener and/or clerical errors and to make edits that do not materially change the substance of the agreement.

AGREEMENT FOR PAYMENT IN LIEU OF TAXES UNDER M.G.L. c. 59, § 5, CLAUSE
45, FOR PERSONAL PROPERTY

This Agreement for Payment in Lieu of Taxes for Personal Property (this "Agreement") is made and entered into as of March __, 2022 (the "Effective Date"), by and between Kearsarge Beverly LLC, a Massachusetts limited liability company with a principal place of business at 1380 Soldiers Field Road, Suite 3-1, Boston, Massachusetts 02135 ("Developer"), and the City of Beverly, a municipal corporation with a principal place of business at 191 Cabot Street, Beverly, Massachusetts 02030 (the "City"). Developer and the City may also be referred to collectively as the "Parties," and individually as a "Party."

WHEREAS, Developer and the City have entered into a Site Lease, dated _____ (the "Lease") under the terms of which the City has leased to Developer portions of land owned by the City, shown on Assessors' Map 11, Lot 306 (10 Pond Street); Map 11, Lot 334 (11 Pond Street); Map 42, Lot 144 (100 Sohier Road); Map 11, Lot 513 (191 Cabot Street); Map 31, Lot 343 (90 Colon Street); Map 42, Lot 41 (502 Cabot Street); which leased property is more particularly described in the Lease (the "Property"); and

WHEREAS, Developer plans to build, own and operate a solar photovoltaic system, including all improvements thereto, anticipated to have an estimated nameplate capacity of approximately 4.301 megawatts ("MW"), direct current ("DC") (the "Project"), on the Property; and

WHEREAS, it is the intention of the Parties that Developer make annual payments to the City for the term of this Agreement in lieu of all personal property taxes for the Project in accordance with M.G.L. c. 59, § 5, cl. 45, and any and all applicable regulations promulgated pursuant thereto or in connection therewith, including all regulations of the Massachusetts Department of Revenue adopted in connection therewith; and

WHEREAS, the Parties wish to avoid uncertainty as to the future personal property tax liability attributable to the Project that may be incurred by the Developer;

WHEREAS, because the Parties need an accurate projection of their respective expenses and revenues with respect to the personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable personal property incorporated within the Project for the term of the Agreement; and

WHEREAS, except as provided herein, the Parties intend that, during the term of this Agreement, Developer will not be assessed for personal property taxes for the Project that Developer might otherwise be subjected to under Massachusetts law, and this Agreement will provide for the exclusive payments in lieu of such personal property taxes during the term hereof; provided, however that this Agreement does not include and shall not affect any other taxes or fees that may be owed now or in the future by Developer, including, but not limited to, taxes for personal property other than the Project, which taxes, if any, shall continue to be assessed by the City in accordance with applicable laws and regulations.

WHEREAS, the City's Board of Assessor's has reviewed and approved the terms of this agreement;

NOW THEREFORE, in exchange for the mutual commitments and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Payment in Lieu of Personal Property Taxes. Developer agrees to make annual payments to the City in lieu of all personal property taxes for the Project for a period of twenty (20) consecutive fiscal years (each fiscal year, July 1-June 30). Assuming a Project nameplate capacity of 4.301 MW (DC) (the "Anticipated Capacity"), annual payments shall be in the amounts set forth in the attached Exhibit A (each such payment, an "Annual Payment"). Each Annual Payment will be paid on a fiscal year basis in four (4) equal (or, in the City's reasonable discretion in order to conform payments to the Board of Assessors' valuation of the Project, slightly unequal) quarterly installments ("Quarterly Payments"), each of which shall be due on or before August 1, November 1, February 1, and May 1 (each a "Quarterly Payment Date") of each fiscal year following the Commencement Date (as defined below). Each Quarterly Payment amount and due date will be noted on a tax bill to be issued by the City to Developer, provided that any failure of the City to issue such a bill shall not relieve Developer of its obligation to make timely payments hereunder, and provided further that if no bill is issued, Developer shall be in compliance with its payment obligations if it makes all Annual Payments in quarterly installments (for which no bill has been issued by the City) by the Quarterly Payment Dates.

Annual Payments shall commence with the first Quarterly Payment being due on the date (the "Commencement Date") of the first Quarterly Payment Date following the first to occur of (i) the Commercial Operation Date (i.e., the date on which the utility authorizes Developer to commence operations of the Project) or (ii) the first day of the nineteenth (19th) calendar month following the month in which this Agreement is executed, and shall continue for twenty (20) full fiscal years, unless sooner terminated as set forth herein. Notwithstanding the foregoing, the Commencement Date shall not be earlier than the first Quarterly Payment Date following the date of commencement of installation of the Project. For the purpose of the preceding sentence, the date of commencement of installation shall mean the date on which racking systems/equipment and solar modules/panels are delivered to the Property. For avoidance of doubt, except as otherwise expressly set forth in this Agreement, the Parties agree that, for the period from the Effective Date through such twentieth (20th) fiscal year, or until the earlier termination or expiration of this Agreement, no personal property taxes shall be assessed to or due from Developer for the Project other than the Annual Payments to be paid by Developer to the City hereunder in quarterly installments as provided hereunder. The Annual Payment for any partial fiscal year shall be pro-rated.

Other than as expressly set forth in this Agreement, Developer agrees that the Annual Payments will not be reduced for any reason (including without limitation on account of a depreciation factor, revaluation or reduction in the City's tax rate, or legislative action fixing or otherwise setting taxes or payments in lieu thereof for photovoltaic solar facilities), and the City agrees that the Annual Payments will not be increased (including on account of an inflation factor, revaluation or increase in the City's tax rate or assessment percentage beyond that

anticipated by the Parties). Developer hereby waives, during the term of this Agreement, any rights it may have otherwise had in the absence of this Agreement to seek, for any reason and in any forum, an abatement or reduction of taxes assessed for the Project, and therefore, hereby waives any such rights with respect to any payments in lieu of taxes assessed in accordance with the provisions of this Agreement.

2. Payment Collection. In addition to such rights and remedies available in this Agreement, all statutory rights and remedies available to the City for the collection of taxes shall also be available to the City for the collection of Annual Payments hereunder, including, but not limited to, the rights and remedies provided in M.G.L. c. 59 and M.G.L. c. 60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. All late payments shall accrue interest at 14 percent per annum as provided in M.G.L. c. 59, § 57. Furthermore, if Developer breaches its payment obligations under this Agreement and fails to cure such breach following notice within the applicable cure period under Paragraph 13, Developer shall pay the reasonable attorneys' fees, court and other costs incurred by the City in the collection of the unpaid amounts.

3. Tax Status. The City agrees that during the term of this Agreement, the City will not assess Developer for any personal property taxes with respect to the Project to which Developer might otherwise be subject to under Massachusetts law, and the City agrees that this Agreement will exclusively govern the payments of such personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the City with respect to the Project, provided, however that this Agreement is not intended to affect, and will not preclude, any other taxes owed by Developer, including, but not limited to, taxes for any real or personal property not incorporated into the Project, which taxes, if any, shall be assessed in accordance with applicable laws and regulations. Notwithstanding the foregoing or anything to the contrary in this Agreement, upon the expiration or earlier termination of this Agreement, the City shall not be bound by any valuation/payment amount, schedule or formula set forth in this Agreement in the assessment of future taxes for the Project after the date of such expiration or termination.

4. Assignment. Developer shall not assign this Agreement in whole or in part without the advance written consent of the City, which shall not be unreasonably withheld or conditioned, except that Developer may (i) collaterally assign this Agreement to an entity providing financing or an affiliate entity in accordance with an equity financing structure for construction, operation or maintenance of the Project with advance written notice to the City, provided that Developer shall not be relieved of its obligations hereunder; or (ii) with advance written notice to the City, assign the Agreement to an entity no less creditworthy than Developer to whom Developer has sold or transferred all its interests in the Project (the "New Owner"), provided that, other than a collateral assignment under clause (i) above, Developer shall not assign this Agreement to any person or entity that is not eligible to enter into this Agreement under M.G.L. c. 59, § 5, cl. 45 nor to any person or entity to whom the Lease is not also being assigned. Upon an assignment of this Agreement to a New Owner of the Project under clause (ii) above, provided the New Owner has agreed in writing to be bound by this Agreement, and Developer has cured any and all defaults of Developer under this Agreement and is not in breach of Developer's obligations, Developer shall not be liable for Annual Payments or other obligations hereunder after the date of such assignment.

5. **Invalidity.** The Parties understand and agree that this Agreement shall be void and unenforceable if (a) this Agreement, or any material portion of this Agreement, is being determined or declared by a court or agency of competent jurisdiction to be illegal, void, or unenforceable, and/or (b) Developer is determined or declared by a court or agency of competent jurisdiction to not be a "generation company" or "wholesale generation company" as those terms are used and/or defined in M.G.L. c. 59, § 5, cl. 45, and M.G.L. c. 164, § 1. In the event this Agreement is declared void in accordance with this Paragraph 6, any payments due and/or made to the City before the date of such declaration shall be and remain property of the City, and to the extent permitted by law, shall be deemed full satisfaction of the taxes in lieu of which they were made.

6. **Notices.** All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, or by mail in a manner of delivery that results in a confirmation of receipt, such as certified mail or Federal Express. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Developer:

Kearsarge Beverly LLC
1380 Soldiers Field Road, Suite 3-1
Boston, MA 02135

If to City:

Mayor
City of Beverly
191 Cabot Street
Beverly, MA 01915

With a copy to:

City Solicitor
City of Beverly
191 Cabot Street
Beverly, MA 01915

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given as provided above by counsel to a Party shall be effective as notice from such Party.

7. **Applicable Law.** This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts without regard to the law of "conflicts of laws." The Parties each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including

interpretation or enforcement of this Agreement or any of its provisions. Venue for all actions brought hereunder shall be solely the state courts located in Essex County, Massachusetts. With respect to any period in which Developer does not have a registered agent for service of process in Massachusetts on file with the Secretary of the Commonwealth of Massachusetts, Developer agrees to accept service of process, including civil complaints, by certified mail at the address indicated in Paragraph 7 (Notices).

8. Force Majeure. As used herein, an event of "Force Majeure" is an event beyond the reasonable control of the Parties, and includes, without limitation, the following events:

- a. Acts of God including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or
- c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event that an event of Force Majeure occurs during the term of this Agreement that renders the Project wholly or substantially unable to produce electricity for a period of more than sixty (60) days, Developer may, at its election, terminate the Agreement following expiration of such sixty (60) day period by written notice to the City, and the Project will thereafter be assessed and taxed as if this Agreement does not exist. Notwithstanding the foregoing or any Force Majeure event or other provision herein to the contrary, Developer shall continue to make Annual Payments without abatement or reduction until this Agreement is terminated, if at all, under this Paragraph 9, except that if any portion of the Project is damaged or destroyed as a result of a Force Majeure event and the damaged or destroyed portion has been removed from the Property, and if such removal results in a reduction in the nameplate capacity (DC) of the Project, Annual Payments shall be reduced in accordance with Paragraph 2.

9. Certification of Tax Compliance. Pursuant to M.G.L. c. 62C, § 49A, Developer hereby certifies under pains and penalties of perjury that it has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

10. Covenants, Representations and Warranties of Parties.

a. During the term of the Agreement, Developer will not do any of the following:

1. Convey by sale, lease, assignment or otherwise any interest in the Property or Project to any tax-exempt entity or organization, including without limitation a charitable organization pursuant to M.G.L. c.59, § 5 (Clause Third);
2. Fail to pay the City all amounts due hereunder when due in accordance with the terms of this Agreement;

3. Seek, for any reason, an abatement or reduction of any of the amounts assessed in accordance with the terms of this Agreement, and Developer hereby waives, during the full term of this Agreement, any rights it may have otherwise had to seek such an abatement or reduction; or
4. Seek to amend or terminate this Agreement on account of the enactment of any law or regulation or a change in any existing law or regulation the intent or effect of which is to fix or limit in any way the method for calculating payments-in-lieu-of-taxes for renewable energy facilities.

b. Developer represents and warrants:

1. It is a domestic limited liability company duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation, is registered with the Massachusetts Secretary of State, and has full power and authority to carry on its business as it is now being conducted.
2. This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles.
3. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.
4. The person executing this Agreement on behalf of Developer has the full power and authority to bind it to each and every provision of this Agreement.
5. Developer is a "generation company" or "wholesale generation company" as those terms are used and defined in M.G.L. c. 59, § 5, cl. 45 and M.G.L. c. 164, § 1.
6. Developer does not qualify for a manufacturing classification exemption pursuant to G.L. c. 59, § 5(16)(3).
7. The documents and information furnished by Developer to the City in connection with this Agreement are true, accurate and complete in all material respects.

8. The performance of Developer's obligations under this Agreement will not violate or result in a breach or default of any agreement or instrument to which Developer is a party or to which Developer is otherwise bound.

c. The City represents and warrants:

1. It is a municipal corporation duly organized, validly existing and in good standing under the laws of Massachusetts.
2. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable laws.
3. The Beverly City Council has approved, authorized or otherwise ratified this Agreement, and the City has taken all other necessary action to authorize and approve the execution of this Agreement.
4. The persons executing this Agreement on behalf of the City have the full power and authority to bind it to this Agreement.

11. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Project, and that there are no third party beneficiaries to this Agreement.

12. Termination by City. Notwithstanding anything to the contrary in this Agreement, the City may terminate this Agreement if:

- a. Developer fails to make timely payments (including any interest payments) required under this Agreement, which failure remains uncured for forty-five (45) days following notice of such failure from the City; provided, however, that the City may nonetheless terminate this Agreement if such failure occurs more than three times in any rolling 365-day period, even if each such failure is cured within the 45-day notice period;
- b. Developer has filed, or has had filed against it, a petition in bankruptcy (and any such involuntary petition is not dismissed within sixty (60) days), or is otherwise insolvent;
- c. Developer otherwise materially breaches this Agreement, which breach remains uncured for forty-five (45) days following notice of such breach from the City; and/or
- d. Developer's representations set forth in Paragraph 11 were untrue, inaccurate, or incomplete in material respects at the time they were made, such misrepresentations have materially adversely affected the City, and Developer has failed to remedy such adverse effect within forty-five (45) days following notice from the City.

13. Term. This Agreement shall commence on the Effective Date and notwithstanding any provision contained herein to the contrary shall terminate on the earlier of (i) the last day of the fiscal year in which the twentieth (20th) anniversary of the Commencement Date occurs, or (ii) the date upon which the City terminates this Agreement in accordance with terms hereof or, (iii) the date upon which Developer terminates this Agreement in accordance with Paragraph 9 (Force Majeure) or by written notice to the City following a termination of the Lease in accordance with the terms of the Lease, provided that in the event of a termination under clause (iii), if the termination by Developer is not following a default by City under the Lease or in accordance with Paragraph 9, Developer shall continue to make Annual Payments until the last day (June 30) of the fiscal year in which the City receives the notice of termination.

14. Counterparts. This Agreement may be executed in one or more counterparts by the Parties hereto each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

15. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the fair cash value of the Project. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over property taxes attributable to the Project, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. City acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to City. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project. Subject to applicable laws and regulations and payment of reasonable costs by the requesting Party, each Party will, from time to time hereafter, negotiate in good faith to execute and deliver, or cause to be executed and delivered, such additional documents as the other Party reasonably requests for the purposes of implementing or effectuating the provisions of this Agreement, including customary lender consent documents as request by Developer which do not increase the City's risks under this Agreement or result in the waiver of any of City's rights or defenses under this Agreement or at law or in equity, as solely determined by the City; nor shall any Party be required to provide an opinion of such Party's legal counsel.

[Signatures Follow on Next Page]

EXECUTED under seal by the undersigned as of the Effective Date set forth above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

CITY OF BEVERLY, MASSACHUSETTS

By: _____
Name: Michael P. Cahill
Title: Mayor

KEARSARGE BEVERLY LLC

By: _____
Name: _____
Title: _____

Exhibit A

Payment Schedule

(Based Upon a System Size of 4.301 MW DC)

Annual Payments:

Year	Pilot Payments (\$)
1	54,092
2	54,092
3	54,091
4	54,091
5	54,091
6	54,091
7	54,090
8	54,090
9	54,090
10	54,089
11	54,089
12	54,089
13	54,088
14	54,088
15	54,088
16	54,087
17	54,087
18	54,087
19	54,086
20	54,086
Total	1,081,783

Office of the City Clerk
191 Cabot Street
Beverly, Massachusetts 01915

Lisa Kent, CMC
City Clerk
978-605-2325

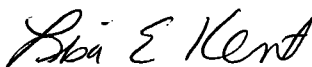
Christine Dixon
Assistant City Clerk
978-605-2326

March 4, 2022

Dear Honorable City Council,

I would like to request that our regularly scheduled City Council meeting for September 6, 2022 be changed to September 12, 2022 due to the recent change of the Massachusetts State Primary Election, which will be held on September 6, 2022.

Thank you,


Lisa E. Kent, CMC
City Clerk

2022 MAR 14 A 9:12

CITY OF BEVERLY
RECEIVED
MAY 12 2022



NO. 090

Office of the City Clerk

191 Cabot Street, Beverly, Massachusetts 01915

Lisa E. Kent, CMC
City Clerk
T: 978-605-2325
E: lkent@beverlyma.gov

Christine Dixon
Assistant City Clerk
T: 978-605-2326
E: cdixon@beverlyma.gov

March 17, 2022

Honorable City Council
191 Cabot Street
Beverly, MA 01915

CITY OF BEVERLY
RECEIVED AND RECORDED
CITY CLERK'S OFFICE
2022 MAR 16 A 8:45

Dear City Councilors:

Enclosed is a renewal application for a Fortune Teller License from Summer Evans, The Beverly Psychic, at 507 Rantoul Street.

City Council approval is needed to complete the process for licensing. No license shall be issued until we have all the necessary paperwork required.

Thank you for your assistance concerning this matter.

Respectfully,

Lisa Kent
City Clerk

The Commonwealth of Massachusetts
 City of Beverly
 APPLICATION FOR LICENSE
 FORTUNETELLER LICENSE
 FEE: \$50.00 per person

CITY OF BEVERLY
 RECEIVED
 2022 MAR -7 P 3:06

To the Licensing Authorities:

The undersigned hereby applies for a License in accordance with
 the provision of the Statutes relating thereto

Summer Evans
 (Full name of person)
 to Fortune teller license
 (State clearly purpose for which license is requested)
 at 507 Rantoul Beverly MA
 (Business location full street address)

In said City of Beverly in accordance with the rules and regulations made under authority of
 said Statutes

Business Name: The Beverly Psychic

Mailing Address: _____
 (if different from above)

Phone Number: 978-412-5577

Email Address: The Beverly Psychic@gmail.com

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all
 state tax returns and paid all state taxes required under law.

[Signature]
 *Signature of Individual or Corporate Name (Mandatory)

By: Corporate Officer (Mandatory, if Applicable)

**Social Security # (Voluntary) or Federal Identification Number

* This license will not be issued unless this certification clause is signed by the applicant

**Your Social Security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax
 filing or tax payment obligations. Licensees who fail to correct their non-filing or delinquency will be subject to license suspension or
 revocation. This request is made under the authority of Mass. G.L. c. 62C s.49A.

Signature of Applicant: [Signature]

Address: 507 Rantoul St

To Be Completed by Clerk's Office: Paid \$ 50.00

Approved _____

License Granted _____



CITY of BEVERLY
PARKING AND TRAFFIC COMMISSION

191 Cabot Street
 Beverly, Massachusetts 01915
 Phone (978) 921-6000
 Fax (978) 921-6187

Chairman
 Richard J. Benevento

Vice Chairman
 Darlene Wynne, AICP

Members
 Sgt. Mike Henebury
 Captain Ryan Laracy
 George Binns
 John Lozada
 Michael Collins
 Leslie Gould
 Jonathan Salt

March 16, 2022

The Honorable City Council
 City Hall, 191 Cabot Street
 Beverly, MA 01915

**RE: RECOMMENDATION: CHANGE LOADING ZONE TIME PARAMETERS AT
 110-114 RANTOUL STREET**

Dear Honorable Council:

During ongoing discussions related to loading activities at 112 Rantoul Street, and at the request of the Parking Enforcement and the Commissioner of Public Services, the Parking & Traffic Commission (the "Commission") reviewed its prior recommendation from April 16, 2021 for a time-limited loading zone at the above location. At its meeting on March 1, 2022, the Commission considered and discussed the recommendation that the Loading Zone in front of Frank Restaurant should not be time limited and instead should be a 24-hour loading zone.

The Commission considered the following points:

- Time-limited loading zones are more difficult to enforce.
- Keeping this loading zone open all day should ease the impacts of on-site loading on adjacent property owners.
- The request impacts only one parking space.
- The impact on the City's parking revenue would be offset by the public benefit of the loading zone to support local business.
- The loading zone sign has already been installed and does not have a time restriction.

Following deliberation, members of the Commission voted unanimously to recommend that the City Council amend Section 270-43 of the City's Traffic Ordinances, to remove the restricted

CITY OF BEVERLY
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 CITY CLERK'S OFFICE
 2022 MAR 17 1:48

time of between 7:00am and 9:00am for the commercial use only loading zone at the location of 110-114 Rantoul Street. The loading zone would be in place 7 days per week without time restriction. As follows:

Section 270-43

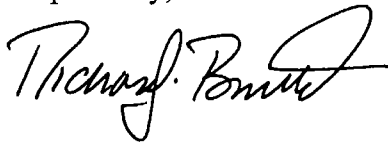
Rantoul Street

West

At 112-114 Rantoul Street, No time restriction
23'8" south from driveway All days

Please feel free to contact Planning Director Darlene Wynne if you have any questions regarding the Commission's vote.

Respectfully,



cc: Estelle Rand, Ward 2 City Councilor (by email)
Sarah Barnat, Barnat Beverly LLC (by email)
Parking & Traffic Commission members (by email)
City Solicitor (by email)
File

Enc.

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 270-43 Parking prohibited during certain hours.

[Last amended 12-18-2017 by Order No. 524A]

No person shall park a vehicle in the following locations between the hours and on the days indicated:

Name of Street	Side	Location	Hours/Days
Abbott Street		From Lothrop east to Endicott Street	10:00 p.m. to 6:00 a.m.
Ash Street	Both	Entire length	8:00 p.m. to 1:00 a.m.
Ash Street	West	Entire length	7:00 a.m. to 4:00 p.m.
Bayview Avenue	Both	Entire length	9:00 p.m. to 6:00 a.m.
Boyles Street	Both	From Hale Street to 31 Boyles Street	8:00 p.m. to 8:00 a.m.
Colon Street	West	From Sohier Road to Fielder Road	8:00 a.m. to 4:00 p.m./All, except Saturday, Sunday and holidays
Columbus Avenue	South	Entire length	8:00 a.m. to 5:00 p.m.
Cross Street	West	From Ray Street to opposite 45 Cross Street	7:00 a.m. to 3:00 p.m./Monday through Friday
Elliott Street	Both	Between the Boston and Maine Railroad crossing of the Portland Division and McKay Street	11:45 a.m. to 12:15 p.m., and 3:45 p.m. to 4:30 p.m./All, except Sunday and public holidays
Fitzgerald Way	North	Beginning at New Balch for 90 feet east	7:00 a.m. to 1:00 p.m./Sunday only
Hale Street	East	From 233 Hale Street to 245 Hale Street	10:00 p.m. to 7:00 a.m.
Hale Street	East	From Pickman Road to Brackenbury Lane	10:00 p.m. to 7:00 a.m.
Lothrop Street		In the small parking lot near the front of the monument at Sally Mulligan Park	9:00 p.m. to 6:00 a.m.
Lothrop Street	East	From Dane Street to Hale Street	10:00 p.m. to 6:00 a.m.
New Balch Street	East	Beginning at Fitzgerald Way for 100 feet north	7:00 a.m. to 1:00 p.m./Sunday only
Ocean Street	Both	From Lothrop Street to the water	8:00 p.m. to 6:00 a.m.
Parramatta Road	South	From Essex Street to Pearl Street Extension	6:00 a.m. to 9:00 p.m.
Rantoul Street	West	At 112-114 Rantoul Street, 23'8" south from driveway	7:00 a.m. to 9:00 a.m. <u>No time restriction</u>
Sohier Road	West	From Colon Street to Mason Street	All days 8:00 a.m. to 4:00 p.m./All, except Saturday, Sunday and holidays

Stone Ridge Road Swan Street	Both	Entire length From Jenness Street to 134 New Balch Street	10:00 p.m. to 7:00 a.m. 7:00 a.m. to 1:00 p.m./Sunday
Swan Street	East	From Sohler Road 200 feet south, except 1 space in front of 34 Swan Street	8:00 a.m. to 4:00 p.m.
Union Street	North	From Cabot Street to Bartlett Street	6:00 p.m. to 6:00 a.m.



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

NO. 092

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

March 3rd, 2022

Christopher and Hilary Gabrieli
c/o David J. Cowell – Hancock Associates, Inc.
185 Centre Street
Danvers, Massachusetts 01923

2022 MAR -7 A 9:22

RE: ISSUANCE OF CHAPTER 91 WATERWAYS LICENSE/PERMIT No. 15441

Dredging, Bridges and Tide Control Structures; 675E Hale Street, Filled and/or Flowed
Tidelands of Salem Sound, Beverly, Essex County

Dear Mr. Cowell,

The Department of Environmental Protection hereby issues the above-referenced Waterways License/Permit, enclosed, authorizing the Licensee to perform certain activities pursuant to M.G.L. c. 91, the Public Waterfront Act, and the Waterways Regulations at 310 CMR 9.00. Any change in use or alteration of any structure or fill not authorized by this License shall render this License void.

RECORDING OF THE LICENSE

This License must be recorded at the Essex County Southern District Registry of Deeds or, if registered land, with the Land Registration Office within sixty (60) days from the date of license issuance. In the case of recorded land, the License shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the project is located. In the case of the registered land, the License shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the project is located. Failure to record this License and Mylar Plans within sixty (60) days of the date of issuance will render this License void pursuant to 310 CMR 9.18.

A Waterways License Recordation Notice Form has been enclosed for your use in notifying the Department of the recording information for this License. Failure to notify the Department of the recording of this License and Mylar Plans is a violation of 310 CMR 9.00 and is subject to enforcement action by the Department.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

CERTIFICATE OF COMPLIANCE

Pursuant to 310 CMR 9.19, once the licensed project is complete, the Licensee must file a Request for a Certificate of Compliance form, BRP WW05, within sixty (60) days of completion but in no event later than five (5) years from the License's issuance date, or any extension thereof, in accordance with 310 CMR 9.19(1). The license for any project for which such a request is not filed and certificate issued may be revoked pursuant to 310 CMR 9.26.

Please contact Ivan Morales-Parra at (617) 292-5621 or at ivan.morales@mass.gov, if you have any questions pertaining to the recording of your License.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Padien", with a long horizontal flourish extending to the right.

Daniel J. Padien
Program Chief
Waterways Regulation Program

Cc: Mayor Michael P. Cahill, City of Beverly
Beverly City Council
Beverly Planning Board
Beverly Conservation Commission
Beverly Harbormaster

Encl: Waterways License/Permit No. 15441
Notification of Waterways License Recordation Form

Program Coordinator
Department of Environmental Protection
Waterways Regulation Program
1 Winter Street, 5th Floor
Boston, Massachusetts 02108
dep.waterways@mass.gov

RE: NOTIFICATION OF RECORDING CHAPTER 91 WATERWAYS LICENSE/PERMIT #15441
Christopher Gabrieli, 675E Hale Street, Salem Sound, Beverly, Essex County

To whom it may concern:

This is to notify you that the above referenced Waterways License/Permit and associated Mylar Plans were recorded with the appropriate Registry of Deeds/ Land Court for this project location and to provide your office with the following recordation information.

Date Recorded: _____

County Registry of Deeds/ Land Court: _____

Book Number _____, Page Number(s) _____ and

Plan Book Number _____, Page Number(s) _____

Sincerely,

Chapter 91 Waterways Licensee or Designee
(please print and sign name)

LICENSE VOID IF NOT RECORDED WITHIN 60 DAYS OF ISSUANCE

The Commonwealth of Massachusetts



No. 15441

Whereas, Christopher Gabrieli

of -- Beverly -- in the County of -- Essex -- and Commonwealth aforesaid; has applied to the Department of Environmental Protection for license/permit to -- perform improvement dredging, maintain two (2) existing pedestrian footbridges, a bird house, and a tide gate pit, as further detailed below -----

and has submitted plans of the same; and whereas due notice of said application, ~~and of the time and place fixed for a hearing thereon,~~ has been given, as required by law, to the -- Municipal Officials -- of the -- City of Beverly; -----

Now, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, ~~subject to the approval of the Governor,~~ authorizes and licenses the said --

Christopher Gabrieli -- subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- perform improvement dredging of approximately 3,650± cubic yards of aquatic sediments over an area of approximately 39,300± square feet; maintain two (2) existing pedestrian footbridges (one 40-foot wide by 331-foot long wood footbridge and one 6 to 7-feet wide by 14±-foot long granite slab footbridge); maintain an existing 31±-square feet concrete bird house (of which 14 square feet is within Ch. 91 jurisdiction); maintain a 14-foot wide by 14-foot long reinforced concrete tide gate pit consisting of extending the height of the reinforced concrete walls by three (3) feet and reconstruct the existing concrete vault cover with a new aluminum access door supported by said walls and, replace the existing tide gate with a 24-inch diameter stainless steel gate with associated pipe and adjustment crew -----

in and on filled and/or flowed tidelands of -- Salem Sound -- at 675E Hale Street -- in the -- City of Beverly -- and in accordance with the locations shown and details indicated on the accompanying License/Permit Plans No. 15441 (5 Sheets), dated May 3, 2019 and last revised on March 9, 2021 prepared by Hancock Associates, Inc.

Specific Legislative Authorizations and/or Licenses previously issued at the project site include: Department of Environmental Protection License (DEP) No. 7131 issued on March 20, 1998. These authorized structures and fill shall be maintained in accordance with the terms and conditions of said Licenses and Plans, or as modified herein.

The structures authorized hereby shall be limited to the following uses: tide water control structure and pedestrian waterway crossing.

This License is valid for a term of thirty (30) years from the date of issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in this License.

The dredging authorized pursuant to the Permit incorporated within this License is valid for a term of five (5) years subsequent to the date of issuance.

This License/Permit is subject to the following Special Conditions and Standard Conditions.

SPECIAL WATERWAYS LICENSE CONDITIONS

1. Any structural alteration or change in use, or any other modification, from that explicitly authorized herein and contained on said License Plans, shall require the prior review of the Department to determine whether additional licensing is required pursuant to M.G.L. Chapter 91 and the Waterways Regulations at 310 CMR 9.00.
2. All structures and/or fill authorized herein shall be constructed to meet the Engineering and Construction Standards pursuant to 310 CMR 9.37.
3. The Licensee shall allow agents of the Department to enter the project site to verify compliance with the conditions of the Chapter 91 License.
4. All work authorized herein shall be completed within five (5) years of the date of license issuance. Said construction period may be extended by the Department for one (1) or more one (1) year periods without public notice, provided that the Applicant submits to the Department thirty (30) days prior to the end of the construction period, a written request to

extend the period and provides adequate justification for said extension.

5. The Licensee shall request in writing that the Department issue a Certificate of Compliance within sixty (60) days completion of the licensed project, but in no event later than five (5) year from the date of license issuance, or any extension thereof, in accordance with 310 CMR 9.19(1). The request shall be accompanied by a certification by a registered professional engineer licensed to do business in the Commonwealth that the project was completed in accordance with the plans, specifications, and conditions of this License.

SPECIAL WATERWAYS DREDGE PERMIT CONDITIONS

1. This Waterways Permit shall be performed in strict conformance with all applicable requirements and authorizations of 401 Water Quality Certification No. X284713 issued by the Department on December 18, 2020, or as otherwise amended thereto.
2. The Permittee shall inform the Department in writing at least three (3) days before commencing any authorized dredging activities.
3. Dredging may be performed by hydraulic or mechanical means.
4. After completion of the dredging authorized herein, no maintenance dredging beyond the term of this Permit is permitted.

Please see Page 4 and 5 for additional conditions to this License/Permit

Duplicate of said plan, License/Permit Plan No. 15441 on file in the office of said Department, and original of said plan accompanies this License/Permit and is to be referred to as a part hereof.

extend the period and provides adequate justification for said extension.

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Duplicate of said plan, License/Permit Plan No. 15441 on file in the office of said Department, and original of said plan accompanies this License/Permit and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this License void.
4. This License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
6. Nothing in this License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, §40.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the MassDEP.
9. This License authorizes structure(s) and/or fill on:

X

Private Tidelands - In accordance with the public easement that exists by law on Private Tidelands, the Licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.

Commonwealth Tidelands - The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.

Great Pond of the Commonwealth - The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.

Navigable River or Stream - The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this License.

10. Unless otherwise expressly provided by this license, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

STANDARD WATERWAYS DREDGE PERMIT CONDITIONS

1. This Waterways Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, bylaws, and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, M. G. L. Chapter 131, § 40. In particular, this issuance is subject to the provisions of Sections 52 to 56, inclusive, of Chapter 91 of the Federal Laws, which provides, in part, that the transportation and dumping of the dredge material shall be done under the supervision of the Department, and, when required, the permittee shall provide at his/her expense a dredge inspector approved by the Department. When said inspector is required, a report certified by the dredge inspector shall be submitted to the Department within thirty (30) days after the completion of the dredging. The report shall include daily logs of the dredging operation indicating volume of dredge material, point of origin, point of destination and other appropriate information.
2. This Waterways Permit is issued upon the express condition that the dredging and transport and disposal of dredged material shall be in strict conformance with the Water Quality Certificate No. X284713 issued by MassDEP on December 18, 2020.
3. All subsequent maintenance dredging and transport and disposal of this dredged material during the term of this Waterways Permit shall conform to all standards and conditions applied to the original dredging operation performed under this Permit.
4. The dredging under this Permit shall be conducted so as to cause no unnecessary obstruction of the free passage of vessels. In doing the dredging authorized, care shall be taken to cause no shoaling. If, however, any shoaling is caused, the Permittee shall, at his/her expense, remove the shoal areas. The Permittee shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Permittee shall pay all costs associated with such work.
5. Nothing in this Permit shall be construed to impair the legal rights of any person, or to authorize dredging on land not owned by the Permittee without consent of the owner (s) of such property.
6. The Permittee shall include in any contract with any person or other legal entity to perform dredging services, a provision requiring said person or legal entity to assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, suits, damages, costs and expenses incurred by reason thereof.
7. Whosoever violates any provision of this Permit shall be subject to a fine of up to twenty-five thousand dollars and zero cents (\$25,000.00) per day for each day such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or shall be subject to civil penalty not to exceed twenty-five thousand dollars and zero cents (\$25,000.00) per day for each day such violation occurs or continues.
8. After completion of the work hereby authorized, the Permittee shall furnish to the Department a suitable plan showing the depths at mean low water over the area dredged.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- Christopher Gabrieli -- by paying into the treasury of the Commonwealth -- two dollars and zero cents (\$2.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department [N/A].

Nothing in this License shall be so construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plan are recorded within sixty (60) days from the date hereof, in the Registry of Deeds for the -- Southern District -- County of -- Essex.

In witness whereas, said Department of Environmental Protection have hereunto set their hands this 3rd day of March in the year 2022.

Program Chief



Department of
Environmental Protection

THE COMMONWEALTH OF MASSACHUSETTS

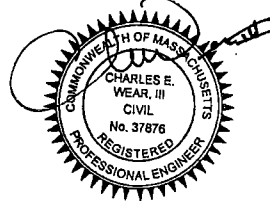
~~This License is approved in consideration of the payment into the treasury of the Commonwealth by the said -- Christopher Gabrieli -- the further sum of -- [N/A] -- the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.~~

BOSTON,

~~Approved by the Governor.~~

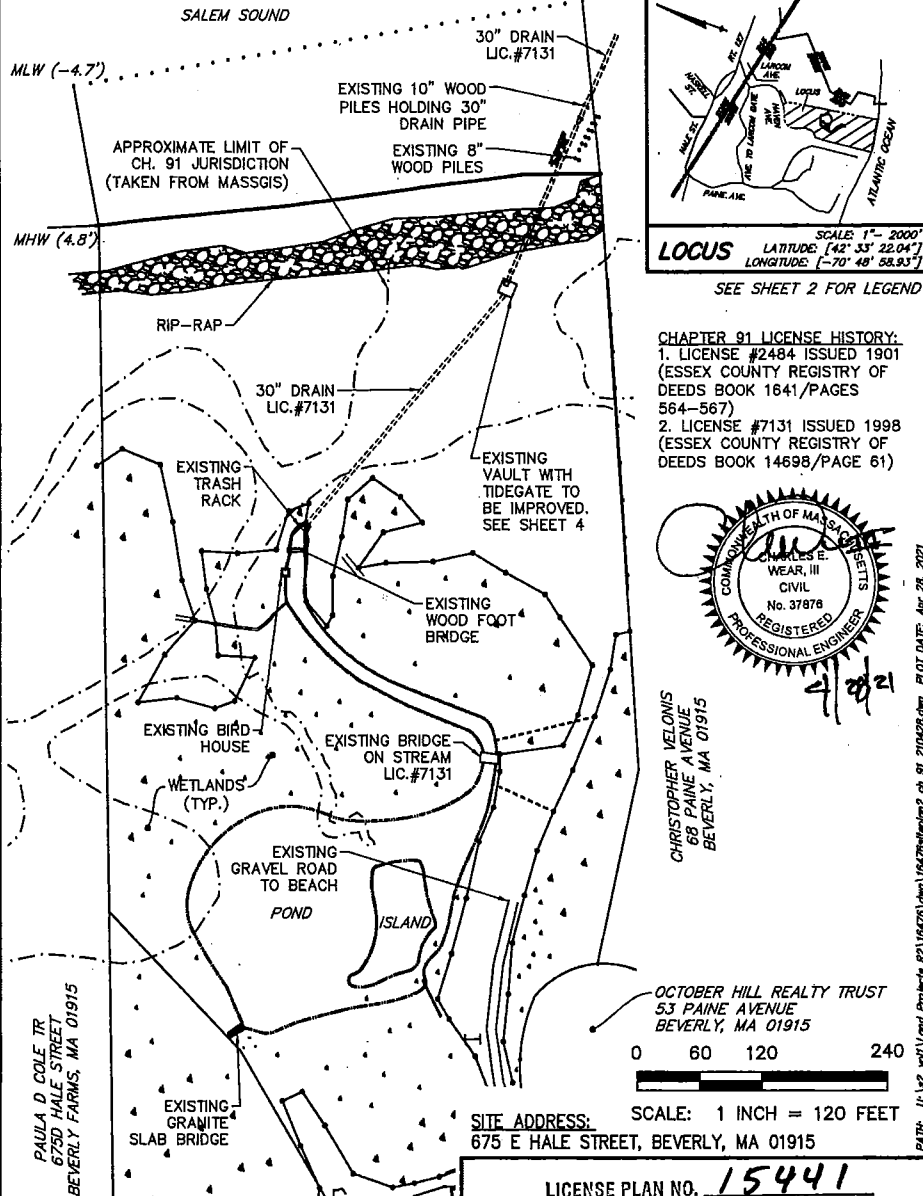
FOR REGISTRY USE ONLY

I CERTIFY THIS PLAN CONFORMS TO THE RULES
AND REGULATIONS OF THE REGISTERS OF DEEDS,
WITH THE EXCEPTION OF SOME LETTERING HEIGHT.



4/20/21
DATE

PROFESSIONAL ENGINEER

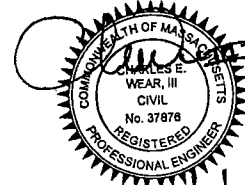


LOCUS
SCALE: 1" = 2000'
LATITUDE: 42° 33' 22.04"
LONGITUDE: -70° 48' 58.93"

SEE SHEET 2 FOR LEGEND

CHAPTER 91 LICENSE HISTORY:

1. LICENSE #2484 ISSUED 1901
(ESSEX COUNTY REGISTRY OF
DEEDS BOOK 1641/PAGES
564-567)
2. LICENSE #7131 ISSUED 1998
(ESSEX COUNTY REGISTRY OF
DEEDS BOOK 14698/PAGE 61)



CHRISTOPHER VELONS
68 PAINE AVENUE
BEVERLY, MA 01915

OCTOBER HILL REALTY TRUST
53 PAINE AVENUE
BEVERLY, MA 01915

0 60 120 240

SITE ADDRESS: SCALE: 1 INCH = 120 FEET
675 E HALE STREET, BEVERLY, MA 01915

LICENSE PLAN NO. 15441

Approved by Department of Environmental Protection
of Massachusetts

D. J. P. 5/3/2020

HANCOCK ASSOCIATES
185 CENTRE STREET, DANVERS, MA 01923
PLANS ACCOMPANYING PETITION OF CHRISTOPHER
GABRIELI TO MAINTAIN EXISTING STRUCTURES IN AND
OVER FLOWED TIDELANDS OF SALEM SOUND AT 675E
HALE STREET, BEVERLY, ESSEX COUNTY.
REVISED 4/28/21 SHEET 1 OF 5 16476

FOR REGISTRY USE ONLY

I CERTIFY THIS PLAN CONFORMS TO THE RULES
AND REGULATIONS OF THE REGISTERS OF DEEDS,
WITH THE EXCEPTION OF SOME LETTERING HEIGHT.

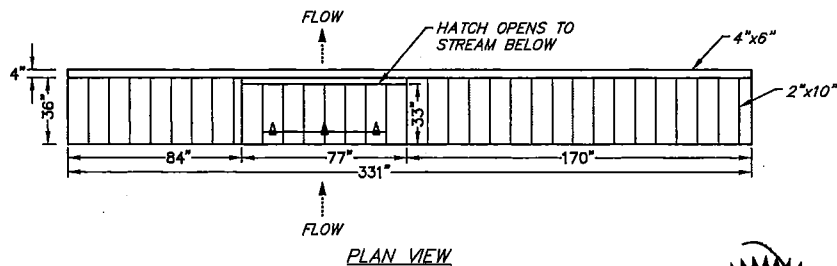
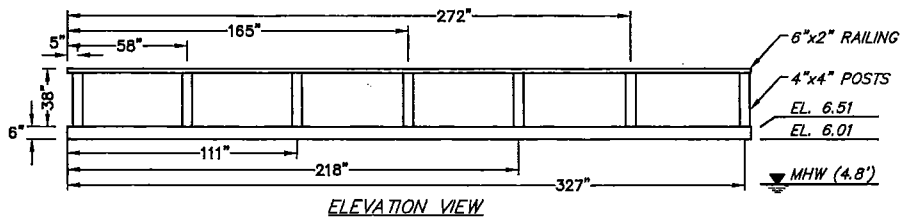


4/20/21
DATE

PROFESSIONAL ENGINEER

LEGEND

- LIMIT OF 100-YEAR FLOOD PLAIN (EL. 12.0)
- PROPERTY LINE
- EDGE POND/STREAM
- DRAIN PIPE
- EDGE OF GRAVEL ROAD
- LIMIT OF BORDERING VEGETATED WETLAND WITH FLAG NUMBER AND ELEVATION
- APPROXIMATE LIMIT OF CH. 91 JURISDICTION



WOOD FOOT BRIDGE
NOT TO SCALE

LICENSE PLAN NO. 15441

Approved by Department of Environmental Protection

Date;

3/3/2022



NOTE:
ELEVATIONS REFER TO
N.G.V.D. 1929

HANCOCK ASSOCIATES

185 CENTRE STREET, DANVERS, MA 01923

REVISED 4/28/21 SHEET 2 OF 5 16476

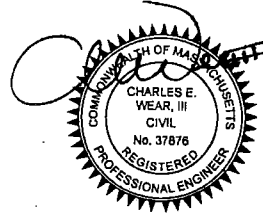
SITE ADDRESS:

675 E HALE STREET, BEVERLY, MA 01915

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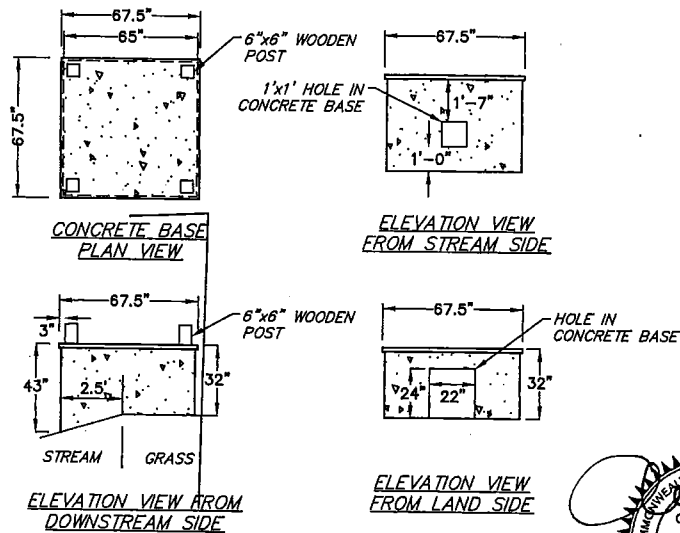
FOR REGISTRY USE ONLY

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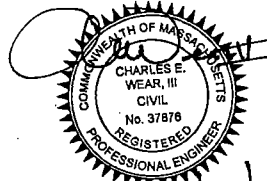


4/28/21
DATE

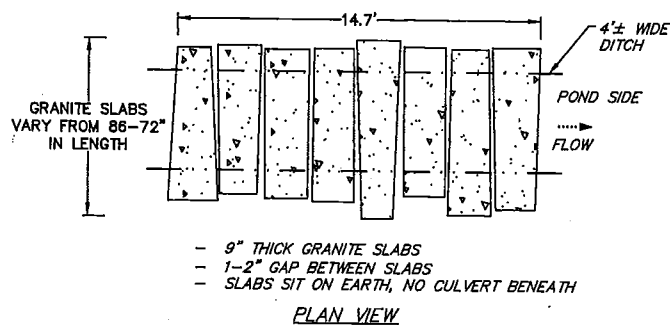
PROFESSIONAL ENGINEER



BIRD HOUSE
NOT TO SCALE



4/28/21



GRANITE SLAB BRIDGE
NOT TO SCALE

LICENSE PLAN NO. 15441

Approved by Department of Environmental Protection

Date:

3/3/2022

HANCOCK ASSOCIATES

185 CENTRE STREET, DANVERS, MA 01923

REVISED 4/28/21 SHEET 3 OF 5 18476

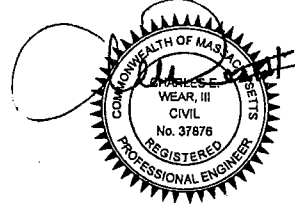
SITE ADDRESS:

675 E HALE STREET, BEVERLY, MA 01915

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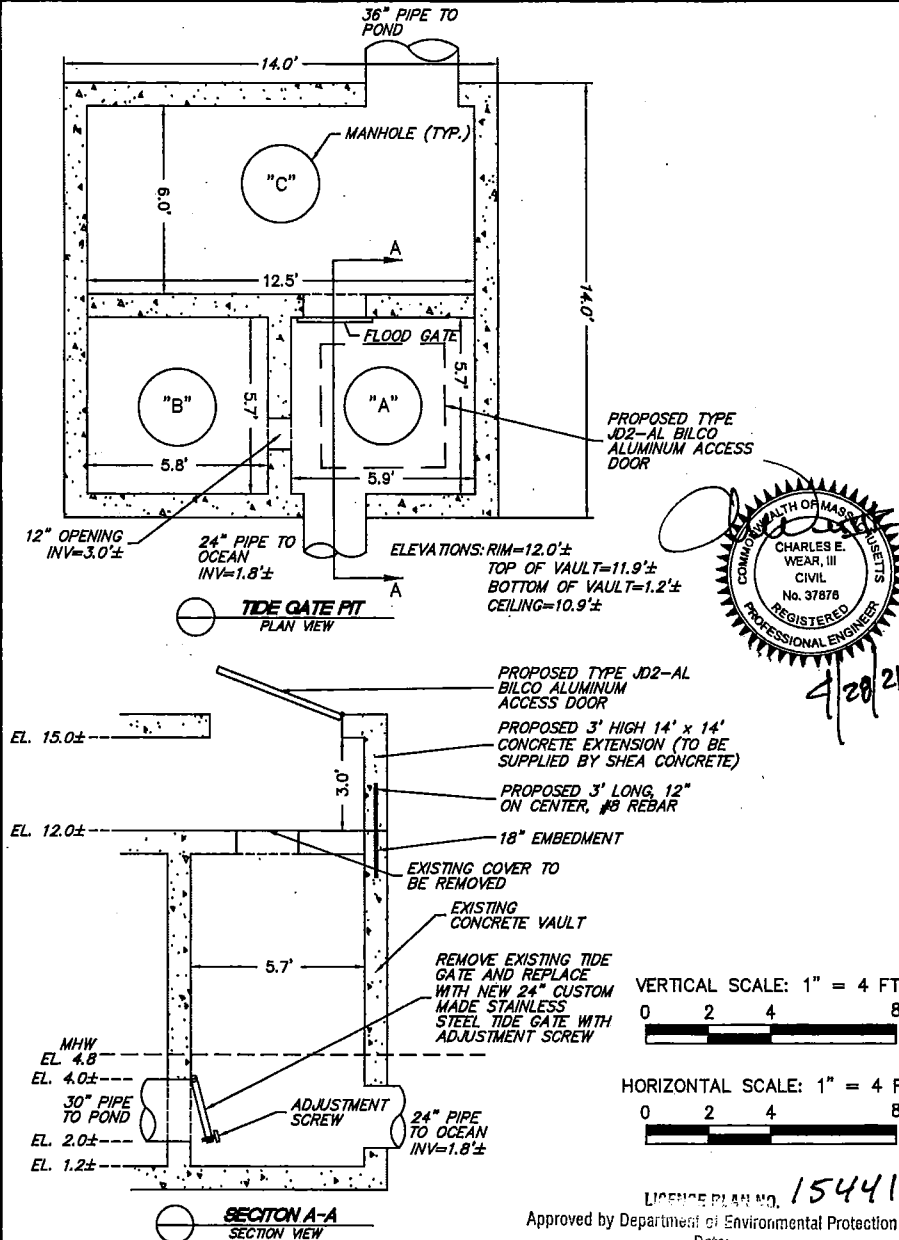
FOR REGISTRY USE ONLY

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AND REGULATIONS OF THE REGISTERS OF DEEDS;
WITH THE EXCEPTION OF SOME LETTERING HEIGHT.



4/20/21
DATE

PROFESSIONAL ENGINEER



LICENCE PLAN NO. 15441

Approved by Department of Environmental Protection
Date;

3/3/2022

HANCOCK ASSOCIATES

185 CENTRE STREET, DANVERS, MA 01923

REVISED 4/28/21 SHEET 4 OF 5 16476

SITE ADDRESS:

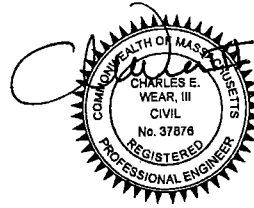
675 E HALE STREET, BEVERLY, MA 01915

PATH: U:\a2_vault\Land Projects R2\18476\dwg\18476altaplan2 ch 91 210428.dwg PLOT DATE: Apr 28, 2021

NO. 002

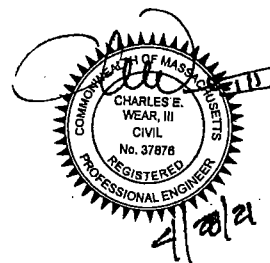
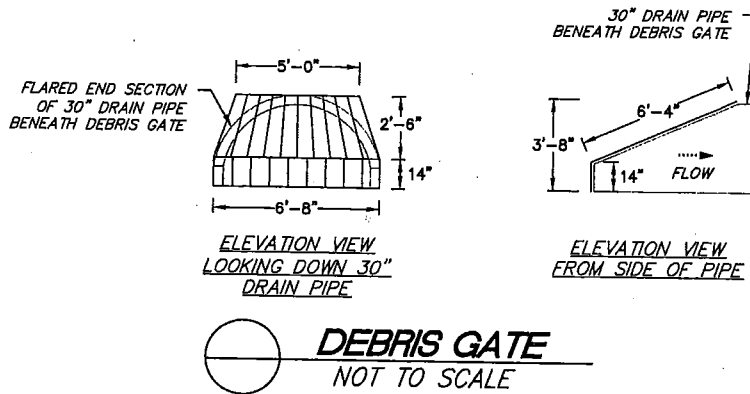
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4/20/21
DATE

PROFESSIONAL ENGINEER



LICENCE PLAN NO. 15441
Approved by Department of Environmental Protection
Date;

3/3/2022

HANCOCK ASSOCIATES

185 CENTRE STREET, DANVERS, MA 01923

REVISED 4/28/21 SHEET 5 OF 5 16476

SITE ADDRESS:

675 E HALE STREET, BEVERLY, MA 01915

PATH: U:\a2_voll\Land Projects R2\16476\dwg\16476altplan2 ch 91 210428.dwg PLOT DATE: Apr 28, 2021